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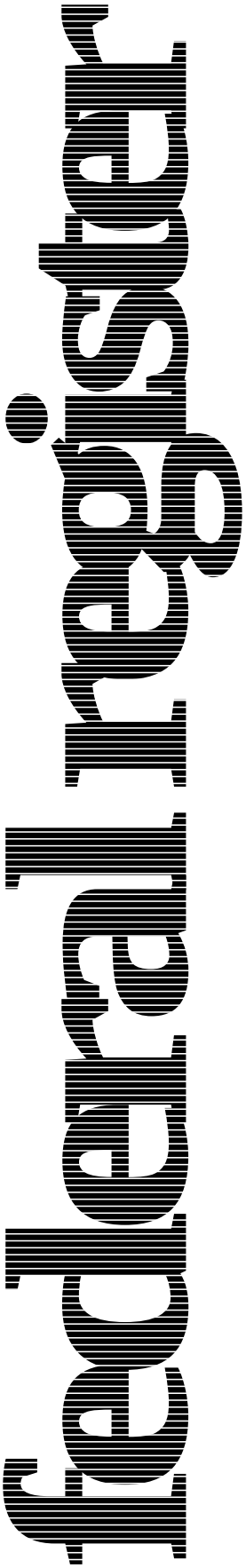

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Presidential Documents

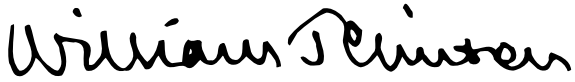
Title 3—

The President

Executive Order 12965 of June 27, 1995

Further Amendment to Executive Order No. 12852

By the authority vested in me as President by the Constitution and the laws of the United States and in order to extend the President's Council on Sustainable Development, it is hereby ordered that section 4(b) of Executive Order No. 12852, as amended, is further amended by deleting ''for a period of 2 years from the date of this order, unless the Council's charter is subsequently extended'' and inserting in lieu thereof ''until June 29, 1997, unless otherwise extended.''



THE WHITE HOUSE,
June 27, 1995.

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Rules and Regulations

Federal Register

Vol. 60, No. 126

Friday, June 30, 1995

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

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 103, 204, 208, 212, 236, 240, 242, 245, 292

[EOIR No. 105F; AG Order No. 1973–95]

RIN 1125–AA08

Immigration Court Designation

AGENCY: Immigration and Naturalization Service, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends 8 CFR 3, 103, 204, 208, 212, 236, 240, 242, 245, and 292 by replacing the tribunal name ''Office of the Immigration Judge'' with the tribunal name ''Immigration Court.'' This rule codifies current usage of the term ''Immigration Court'' in reference to deportation and exclusion proceedings conducted before Immigration Judges throughout the United States. The rule makes no substantive changes in Immigration Judge proceedings.

EFFECTIVE DATE: This final rule is effective on June 30, 1995 except that the amendment to § 242.1(a) as revised at 59 FR 42414, August 17, 1994, is effective August 17, 1995.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, Associate Counsel to the Director, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone: (703) 305–0470.

SUPPLEMENTARY INFORMATION: The final rule is a nomenclature change. The rule changes the name of the administrative tribunal which initially hears deportation and exclusion proceedings from ''Office of the Immigration Judge'' to ''Immigration Court.''

This change reflects the current usage of the term ''Immigration Court'' by the legal community. The term is already in such common usage that the federal circuit courts refer to this tribunal as the ''Immigration Court'' in their published opinions. *See, e.g., Campos* v. *Nail*, 43 F.3d 1285, 1289 (9th Cir. 1994); *Margalli-Olvera* v. *INS*, 43 F.3d 345, 349 (8th Cir. 1994); *Palciauskas* v. *INS*, 939 F.2d 963, 964 (11th Cir. 1991); *Garcia-Ortega* v. *INS*, 862 F.2d 564, 566 (5th Cir. 1989); *Gumbol* v. *INS*, 815 F.2d 406, 407 (6th Cir. 1987).

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget. This rule has no Federalism implications warranting the preparation of a Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612. The rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Immigration and Naturalization Service, Organization and functions (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Immigration, Immigration and Naturalization Service, Reporting and recordkeeping requirements, Surety bonds.

8 CFR 204

Administrative practice and procedure, Immigration, Immigration and Naturalization Service, Reporting and recordkeeping requirements.

8 CFR 208

Administrative practice and procedure, Aliens, Immigration, Immigration and Naturalization Service, Reporting and recordkeeping requirements.

8 CFR 212

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8 CFR 236

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8 CFR 240

Administrative practice and procedure, Immigration, Immigration and Naturalization Service.

8 CFR 242

Administrative practice and procedure, Aliens, Immigration and Naturalization Service.

8 CFR 245

Aliens, Immigration, Immigration and Naturalization Service, Reporting and recordkeeping requirements.

8 CFR 292

Administrative practice and procedure, Immigration, Immigration and Naturalization Service, Lawyers, Reporting and recordkeeping requirements.

Accordingly, 8 CFR Chapter 1 is amended as set forth below:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2. In 8 CFR part 3 remove the words ''Office of the Immigration Judge'' each time they appear and add, in their place, the words ''Immigration Court'' in the following places:

a. Section 3.3(a)
b. Section 3.7
c. Section 3.13, in the definition for ''Filing''
d. Section 3.14(a)
e. Section 3.15(b)(6), (b)(7), (c)(1), and (c)(2)
f. Section 3.17(a)
g. Section 3.18
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i. Section 320 (a) and (b)
j. Section 3.23(b)(1)
k. Section 3.31(a)
l. Section 3.36
m. Section 3.38(b)

n. Section 3.40 introductory text
o. Section 3.40(b)

3. In 8 CFR part 3 remove the words ''Immigration Judge office'' and add, in their place, the words ''Immigration Court'' in the following place: Section 3.11.

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

4. The authority citation for part 103 is revised to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

5. In 8 CFR part 103 remove the words ''Office of the Immigration Judge'' and add, in their place, the words ''Immigration Court'' in the following place: Section 103.7(a).

PART 204—IMMIGRANT PETITIONS

6. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

7. In 8 CFR part 204 remove the words ''Office of the Immigration Judge'' and add, in their place, the words ''Immigration Court'' in the following place: Section 204.2(a)(1)(iii)(A)(*2*).

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION

8. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 31 U.S.C. 9701; 8 CFR part 2.

9. In 8 CFR part 208 remove the words ''Office of the Immigration Judge'' and ''Offices of Immigration Judges'' each time they appear and add, in their place, the words ''Immigration Court'' in the following places:

a. Section 208.2(b)
b. Section 208.3(a)
c. Section 208.4(c) introductory text, (c)(1), (c)(2), (c)(3)
d. Section 208.7(c)(2)
e. Section 208.19(b)(2)

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

10. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

11. In 8 CFR part 212 remove the words ''Office of the Immigration Judge'' and add, in their place, the words ''Immigration Court'' in the following places: Section 212.3(a)(2).

PART 236—EXCLUSION OF ALIENS

12. The authority citation for part 236 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1362.

13. In 8 CFR part 236 remove the words ''Office of the Immigration Judge'' and add, in their place, the words ''Immigration Court'' in the following place: Section 236.3(b).

PART 240—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

14. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254a, 1254a note.

15. In 8 CFR part 240 remove the words ''Office of the Immigration Judge'' and add, in their place, the words ''Immigration Court'' in the following places:

a. Section 240.10 (d)(2) and (d)(3)
b. Section 240.18 (b) and (c)

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

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

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

17. In 8 CFR part 242 remove the words ''Office of the Immigration Judge'' each time they appear and add, in their place, the words ''Immigration Court'' in the following places:

a. Section 242.1 (a) introductory text and (b)
b. Section 242.2(i)
c. Section 242.17(c)(3)

18. In addition to the previous amendment, § 242.1(a) introductory text, as revised at 59 FR 42414, August 17, 1994 is amended by removing the words ''Office of the Immigration Judge'' and adding, in their place, the words ''Immigration Court'', effective August 17, 1995.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

19. The authority citation for part 245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; 8 CFR part 2.

20. In 8 CFR part 245 remove the words ''Office of the Immigration Judge'' and add, in their place, the words ''Immigration Court'' in the following place: Section 245.1(c)(7)(i)(B).

PART 292—REPRESENTATION AND APPEARANCES

21. The authority citation for part 292 continues to read as follows:

Authority: 8 U.S.C. 1103, 1252b, 1362.

22. In 8 CFR part 292 remove the words ''office of the Immigration Judge'' and add in their place, the words ''Immigration Court'' in the following place: Section 292.3(b)(1)(vi).

Dated: June 21, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–16046 Filed 6–29–95; 8:45 am]

BILLING CODE 4410–01–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 618, and 620

RIN 3052–AB43

Organization; General Provisions; Disclosure to Shareholders; Technical Assistance and Financially Related Services; Member Insurance

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or Agency), by the Farm Credit Administration Board (Board), issues a final regulation governing Technical Assistance and Financially Related Services and Member Insurance. Subpart A of the final regulation defines technical assistance, financial assistance and financially related services and clarifies what types of services the Farm Credit System (System or FCS) institutions are authorized to provide. The final regulation maintains the FCA's ability to regulate safety and soundness risks while allowing FCS institutions greater flexibility to exercise statutory authorities. The existing prior approval requirement is replaced with a list of authorized services, a post-review process for all services that have been authorized by the FCA, and a procedure for obtaining FCA authorization to offer a new service that has not been previously reviewed and authorized. The final rule replaces the FCA Board Policy Statement on Out-Of-Territory Financially Related Services (FCA–PS–50 BM–10–June-93–03) and the FCA Bookletter on Out-Of-Territory Financially Related Services dated

September 3, 1993. The final Member Insurance regulation clarifies existing rules and reduces regulatory burdens wherever possible.

EFFECTIVE DATE: The final regulation shall become effective upon the expiration of 30 days after publication in the **Federal Register**, during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:
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or
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SUPPLEMENTARY INFORMATION: On October 31, 1994, the FCA proposed amendments to its regulation on financially related services and member insurance. 59 FR 54399. Under title I, section 1.12; title II, sections 2.5 and 2.12 (15); and title III, section 3.7 of the Farm Credit Act of 1971, as amended (the Act), the FCA is responsible for promulgating regulations governing the offering and administering of technical assistance, financial assistance, and financially related services (hereinafter referred to as ''related services'') by banks and associations.

Farm Credit System institutions have expressed a desire to serve the evolving needs of farmers and ranchers more effectively through their statutory authority for providing related services. The FCA understands the System's desire to offer the fullest range of related services allowable under statutory authorities, as long as safety and soundness risks can be managed.

The FCA has concluded that, under most circumstances, it is appropriate to replace the current prior approval requirement with specific regulatory criteria for determining which services can be offered and under what circumstances. However, in its role as a safety and soundness regulator, the FCA will continue to review new services in order to ensure that they are legally authorized and do not present excessive risk to the System. The FCA believes this is a reasonable approach and that it is impracticable to prescribe specific regulations for new services that have yet to be offered by the System. Consistent with the FCA's role as an arm's-length regulator, the final rule requires an institution offering a service to assume primary responsibility for the related services it provides. The FCA will ensure safety and soundness and compliance primarily through use of its examination and supervisory powers.

I. Regulatory Burden

The final regulation accomplishes a significant reduction in regulatory burden for System institutions and reduces the FCA's administrative costs of assuring compliance with the regulation. It replaces an outdated prior approval requirement with regulatory guidance that holds individual institutions more accountable for their activities. The remaining regulatory costs are justified in order to meet statutory requirements and address safety and soundness concerns.

II. Public Comments

The comment period on the proposed regulation at § 618.8000 closed on December 30, 1994. The FCA received a total of 116 comment letters from the public. These included 111 letters from System institutions in addition to the letters from the Farm Credit Council (FCC) on behalf of its membership; the American Bankers Association (ABA); the Independent Bankers Association of America (IBAA); the Savings and Community Bankers Association (SCBA); and Minnesota Mutual Insurance Corporation (Minnesota Mutual). Prior to finalizing its comments, the FCC received input and concurrence on its comments from its membership and a work group established by System institutions to study related services. The comments received from System institutions included letters from directors/stockholders and employees of the institutions.

Two additional letters were received after the comment period closed, one from the Kentucky Bankers Association (KBA) and one from an FCS association. Because the KBA's comments were essentially the same as those made by the ABA, the responses to the ABA comments address the comments made by the KBA. The FCS association's comments were essentially the same as the majority of those received from other System institutions and are similarly addressed.

With a few exceptions, the comments from System institutions and the FCC were overwhelmingly supportive. They concluded that the FCA has achieved an appropriate balance between its statutory responsibility to focus on safety and soundness issues and the need to remove unnecessary regulatory burdens. They identified the reduction in prior approval requirements as an example of significantly reducing regulatory burden. The exceptions include disagreement with the proposed rule on out-of-territory related services, and 11 System institutions suggested additional revisions to the process, the eligibility criteria, and the insurance issues.

The trade industry groups were more critical of the proposed regulation. They expressed concerns that it exceeds the System's statutory authorities, that it may create possible competitive disadvantages for commercial banks, and that it may pose safety and soundness risks by reducing involvement by the FCA and System banks. The trade industry groups also commented on a number of specific points in the proposed regulation.

The following narrative summarizes general concerns raised by the trade industry groups (ABA, IBAA, TBA, and SCBA) about the proposed regulation, addresses specific comments received on the various sections of the regulation during the comment period, and responds to those comments.

III. General Comments

The trade industry groups are concerned that the proposed regulation would allow System institutions to exceed existing statutory authorities; they believe any expansion of authorities would be more appropriately addressed through legislative means. They further believe the proposed rule allows System institutions greater latitude to provide services that are not justified by the needs of the borrowers. The IBAA also believes that elements of the proposed rule may increase safety and soundness risks or allow a System institution to compete unfairly against private corporations. It concludes that these changes would cause the FCA to give up much of its mandated regulatory oversight and power to control abuses of these functions. Finally, the trade industry groups suggest that, with this proposal, the FCA is not only permitting but also encouraging the System to violate the statute.

The FCA believes the Act clearly authorizes System institutions to offer a variety of related services, subject to regulation by the FCA for safety and soundness concerns. Further, the Supreme Court has recently confirmed that a bank regulator is to be given great deference in interpreting the statute it is charged to enforce.[1] The statute clearly

[1] *See, Nations Bank* v. *Variable Annuity Life Insurance Company*, 786 F. Supp. 6639 (SD Tex. 1991), rev'd 998 F. 2d 1295 (5th Cir. 1993), rev'd U.S. Dkt. No. 93–1612 (Jan. 8, 1995).

authorizes System institutions to provide financial and technical assistance to borrowers, applicants, and members and to make available to them related services appropriate to their on-farm and aquatic operations under regulations prescribed by the FCA. Therefore, the FCA believes it is well within its authority to define by regulation such related services, the conditions under which they can be offered, and to whom they can be offered. Furthermore, the FCA believes that its interpretation of these statutory authorities must take into account changing conditions in the agricultural and financial sectors. The FCA's role as a safety and soundness regulator requires that it openly recognize changing conditions and respond accordingly.

The IBAA commented that it has long opposed measures to expand the powers granted to System institutions and objected to the publication of the proposed rule prior to a new congressional session. The FCA disagrees and points out that the final rule is well within the FCA's statutory authority and, like the statute, the proposed regulation limits authorized services to the on-farm operations of persons or entities eligible to borrow from the System. Further, farm related businesses and rural home borrowers were specifically not included as eligible recipients for related services.

The trade industry groups also commented that the proposed rule would lead to, or encourage, predatory loan pricing by System institutions. However, much of the comment by the ABA is not relevant to the regulation being promulgated because the objection deals directly with loan pricing, not related services. They also objected to a statement in the preamble suggesting that the rule would allow related services even if priced at cost or at a slight loss in order to increase customer satisfaction or attract new customers. The ABA contends that this aspect of the proposed rule encourages the bundling of below-cost services with loans in such a manner that loan packages would be priced below market rates. Contrary to this assertion, the proposed and final rule discourage such packaging. For example, § 618.8015 retains the existing requirement to disclose separately the cost of any related service from loan fees and, if the service is required as a condition of the loan, to inform the recipient that purchasing the service from a System institution is optional. Thus, the regulation does not encourage related services to be bundled with loans. In addition, in most cases there is no requirement that the purchaser have a lending relationship in order to receive a related service.

The IBAA claims that for safety and soundness reasons below-market pricing of services should not be allowed and that the FCA should oversee the pricing of such products. The FCA believes that the feasibility analysis required by § 618.8020 will ensure that the pricing of each related service is justified. Each institution offering such a service must conduct a feasibility analysis, which includes pricing and an evaluation of the market. Related service programs will also be examined by the Agency to ensure they are being operated in a safe and sound manner.

A. Section-by-Section Analysis of Comments Received

1. Section 618.8000—Definitions

The FCA received several comments on the definition of related services in proposed § 618.8000(b). The ABA believes the definition exceeds what is contemplated by the statute because it contains the phrase ''pertains to'' the recipient's on-farm operations rather than the phrase ''appropriate to'' that is used in the existing regulation and the statute. The ABA contends that ''appropriate to'' is narrower and more carefully tailored than ''pertains to'' and requires a considerably stronger nexus between the farm operation and the related service. The FCA did not intend for the definition of related services, as proposed, to expand the types of services that may be provided under the statute, but believed that the proposed rule defined related services using a more common term. In order to be responsive to the commenters and alleviate any concerns that the definition of related services has expanded System institutions' authorities beyond those granted in the statute, the definition in the final rule has been modified to mirror the wording in the statute.

The IBAA commented that although the proposed regulation defines the term ''related services'' to include, but not be limited to, technical assistance, financial assistance, financially related services, and insurance, it did not specify what types of activities these terms might encompass. Further, the IBAA is opposed to the addition of ''financial assistance'' as a related service because it believes financial assistance should be addressed through regulations governing lending or similar functions. The FCA noted in the proposed regulation that several terms are used in the statute to describe a category of non-lending type activities in which System institutions are authorized to engage. Financial assistance and technical assistance are two such terms used in section 3.7(b) of the Act to describe the non-lending services banks for cooperatives are authorized to provide to their customers. For the purpose of this regulation, financial assistance does not include making loans or leases or any other type of lending activity. Confusion over these terms is the primary reason that the FCA proposed using a single term to reference the types of services that may be provided by the different types of System institutions. In fact, the IBAA's comment further supports the need for one general term rather than continuing to use several terms, such as financial assistance, that could have different meanings. The IBAA's arguments for change were not convincing; therefore, the final regulation remains as proposed in this regard.

The FCC agreed with the FCA's statement in the proposed preamble that related services should be broadly construed. The FCC also agreed that the definition should not include advertising or purely promotional activities, but it suggested that services provided by third parties (with the cooperation of a System entity), which present little, if any, risk of financial liability to the System entity, should likewise not be considered ''related services.''

The FCA confirms its statement in the preamble to the proposed rule that advertising and purely promotional activities are not intended to be included within the definition of related services. The FCA further acknowledges that the distinction between promotional activities and related services can be unclear. Although it is easy to conclude that passing out pens with a Farm Credit logo is a purely promotional activity, and that providing farm recordkeeping for eligible borrowers is a related service, there are many activities that will fall in between.

The FCA also recognizes that System institutions participate in various business arrangements through third parties, and it is often difficult to determine whether an institution is, in fact, offering a related service by cooperating with a third party provider. Assisting individual borrowers in preparing their tax returns is clearly a related service, whereas renting out an association conference room for a 4–H Club lecture is not a related service. However, when the service is provided by a third party in cooperation with a System institution, the line between

what is or is not a related service will often be more difficult to draw.

The FCA concludes that neither advertising and promotional activities, nor services provided by third parties, should be automatically excluded from the definition of related service in the final rule. Rather, a case-by-case evaluation must be made for the activities based on a number of factors. The level of risk in a particular service, even if provided by a third party, is not the sole deciding factor as to whether a proposed service meets the definition of a related service. Likewise, the mere existence of a third party as the service provider is not determinative as to whether an activity is or is not a related service. In addition, the lack of profitability is not necessarily determinative when evaluating whether promotional activities are related services. Various factors (such as the nature of the activity, who provides the service, and the level of involvement and responsibility of both parties) should be used in evaluating whether an activity is properly considered a ''related service.'' The statute requires that related services provide assistance to eligible borrowers in managing their on-farm operations and should always be used as a guide when questions arise.

Four associations commented that the FCA should define related services in such a way as to eliminate activities that are necessarily incidental to lending or leasing activities (such as appraisal services) and are reasonably and customarily performed in the business of rural or agricultural lending and leasing. These associations contend that such an exclusion from the definition of related services would eliminate unnecessary regulatory burdens such as the need for approving the feasibility of activities that are inherently feasible because they are normal and customary activities of institutions in their primary business of lending and leasing.

The FCA addressed this issue in the preamble to the proposed regulation. *See* 59 FR 54402, October 31, 1994. The commenters have provided no information that would cause the FCA to resolve this issue in a different manner. The fact that an institution customarily performs a service as part of its lending function does not automatically mean that the service, when provided on an independent fee basis, would not be a related service. Nor does it necessarily follow that establishing a program to provide a service on a fee basis will always make good business sense for an institution. Each activity must be evaluated to determine the statutory authority that enables the institution to engage in the activity and what statutory restraints exist on the exercise of that authority. As discussed in the preceding paragraph, there is no bright-line test or absolute standard that the Agency could adopt in the regulation to categorically exclude certain types of activities. The FCA is not convinced that it is necessary to exclude certain activities from the definition of related services; thus, the definition has been adopted as proposed.

The FCC commented that the definition of System banks and associations in proposed § 618.8000(c) should be modified to incorporate service corporations in order to eliminate any uncertainty as to whether those entities are authorized to offer related services. In the preamble to the proposed rule, the FCA noted that because section 4.25 of the Act grants service corporations the powers and authorities of Farm Credit banks, they would continue to be authorized to provide related services. In addition, § 611.1136 of this chapter provides that service corporations are subject to the regulations governing banks and associations. Nevertheless, although the FCA does not believe it is required, service corporations have been included in the final definition of ''System banks and associations'' in order to eliminate any uncertainty.

Unless specifically excepted, all provisions of part 618 apply to service corporations, and service corporations may offer those services that System banks are authorized to offer. With regard to eligibility criteria, service corporations are authorized to provide services to entities eligible to borrow from the owners of the service corporation, as prescribed in § 618.8005(d). The FCA notes, however, that certain service corporations may be restricted by charter or the special purposes for which they were created from offering related services or certain types of related services. For example, service corporations are prohibited by section 4.25 of the Act from offering insurance. Service corporation charters may also include special restrictions on the manner in which they can offer related services or on the manner in which certain provisions of part 618 of this chapter apply to their offering of services. Finally, the Related Services List may also contain special conditions that affect how a service corporation can offer a related service.

2. *Section 618.8005—Eligibility*

The IBAA commented that the proposed regulation was not clear as to whether marketers and processors would be eligible for related services regardless of whether they were eligible for borrowing. It further stated that if such entities were eligible for related services, but not eligible for borrowing, then the eligibility criteria were too vague and ambiguous. The IBAA believes that marketers and processors should only be eligible for related services if a debtor-creditor relationship already exists between the entity and a System institution.

In response, the FCA notes that § 618.8005(a) of the proposed regulation provides that Farm Credit banks and associations may offer related services to persons eligible to borrow as defined in § 613.3045 of the regulations, which provides the requirements for on-farm throughput for lending eligibility. Therefore, marketers and processors must be eligible to borrow from a System institution in order to receive related services. On the other hand, the Act does not require that only current borrowers may receive related services (apart from credit life and disability insurance), and the Agency declines to impose such a limitation by regulation. Accordingly, the suggestions regarding the eligibility of marketers and processors were not adopted.

The FCC and two associations recommended that § 618.8005 be revised to enable System banks and associations to provide related services to farm-related businesses and rural homeowners. The FCA believes that a change in the Act is required before farm-related businesses and rural homeowners could be considered eligible recipients of related services. Currently, the Act restricts related services offered by Farm Credit banks and associations to those that are appropriate to on-farm or aquatic operations. Farm-related businesses and rural homeowners who do not have farm or aquatic operations would not be eligible for services that must, by statute, be appropriate to such operations.

Numerous System commenters expressed support for proposed § 618.8005(d), now § 618.8005(e), which authorizes the provision of related services to recipients that would not otherwise meet the requirements of § 618.8005(a) through (c). As proposed, this provision was limited to services provided that were a ''part of or pertained to'' a transaction between an eligible borrower and the recipient of the service. Based on a concern that this language might permit an expansion of related services beyond the Agency's intentions, the language has been modified in the final rule. The rule now states that the service may be provided only if it is ''requested by the eligible

borrower or necessary to the transaction.'' As a result, appraisals, loan servicing, and other services that are necessary to a transaction with an eligible borrower may be provided to any party to the transaction. In situations in which the related service may be useful, but perhaps not necessary, it may be provided to any party to the transaction at the request of the eligible borrower.

The IBAA does not believe that this authority is necessary or justifiable and believes that it constitutes an unwarranted expansion of authorized services. As noted in the preamble to the proposed rule, this provision was included in order to accommodate eligible borrowers who were not able to receive related services directly due to circumstances involving their transactions with non-eligible entities. *See* 59 FR 54402, October 31, 1994. For example, an eligible borrower who needs an appraisal of agricultural real estate in connection with a loan application with a commercial bank or the former Farmers Home Administration (FmHA) is typically precluded from obtaining it, because the commercial bank regulations and FmHA procedures generally require that the eligible borrower's appraisal be procured by the lender. The FCA has determined that the purposes of the Act would be frustrated if eligible borrowers could not receive related services solely because the regulations of other Federal agencies or the transactional requirements with other entities preclude them from directly contracting for the services from System institutions. Further, the FCA has concluded that System institutions are authorized by statute to provide related services for persons eligible to borrow, even if a non-eligible entity is involved in the transaction and may be the party that actually obtains the service on behalf of the person eligible to borrow.

For these reasons, the FCA believes that § 618.8005(e) is necessary in order to ensure that eligible borrowers are able to receive related services and is justified by the Act under factual situations presented to the FCA. The FCA further believes that this provision, as modified in the final rule, ensures that the System will continue to be able to appropriately serve farmers and ranchers as Congress intended.

One of the associations that commented favorably on § 618.8005(e) suggested that this authority could be used in situations in which an intermediary business would be providing a bundle of services that include some offered by System institutions. However, it noted that in some instances it may be difficult if not impossible to trace the end-user of the information and services. Therefore, it urged the FCA to interpret § 618.8005(e) to allow services to be provided to those business entities because the services would ultimately benefit eligible farmers and ranchers and members of the agricultural community. The FCA is unable to interpret § 618.8005(e) to allow related services to be provided in situations in which the transaction and the eligible borrower receiving the services cannot be readily identified as such. Although the FCA recognizes that farmers and agriculture in general may benefit from System institutions being able to provide services to other non-eligible entities that in turn serve agricultural interests, the FCA does not believe that a general benefit to agriculture is sufficient to meet the eligibility requirements of the Act. Therefore, related services may only be provided pursuant to § 618.8005(e) when an identifiable eligible borrower is a party to the same transaction.

In the preamble to the proposed regulation, the FCA noted that banks for cooperatives would continue to be subject to the requirements of section 3.7(b) of the Act and § 613.3120 when providing related services in connection with export and import transactions pursuant to proposed § 618.8005(d), now § 618.8005(e). Subsequent to the approval of the proposed regulation on September 29, 1994, the Farm Credit System Agricultural Export and Risk Management Act (Pub. L. 103–376, October 19, 1994) removed the requirement in section 3.7(b) that a voting stockholder of the bank substantially benefit from services provided in connection with export transactions. The FCC requested that FCA clarify the impact of this statutory amendment in the final rule. The FCA confirms that in light of Pub. L. 103–376, the requirements of 3.7(b) and § 613.3120 of this chapter (that a voting stockholder must substantially benefit from related services) only apply in connection with import transactions.

After considering all of the comments received on § 618.8005, adding new paragraph (d), clarifying the scope of paragraph (e), and addressing legislative amendments, the FCA has adopted § 618.8005 as modified.

3. Section 618.8010—Related Services Authorization Process

Comments and suggestions in this area were received from the ABA, IBAA, SCBA, FCC, and four System associations and included recommendations on the following issues. A large majority of the System institutions commented positively on the changes made to this section, supported the streamlined process, and felt the proposed regulation would reduce regulatory burdens.

The ABA is concerned that the scope of the sample RS List, in *Appendix A* of the proposed rule, exceeds the definition of related services in the proposed regulation. However, it does not reference any specific service or give examples of how it considers the definition to be improperly interpreted. The FCA has concluded that all of the listed related services fall within the definition of related services in proposed and final § 618.8000(b) and within System institutions' statutory authorities.

The ABA also perceived the preamble to the proposed rule as allowing System institutions to provide services that might currently be offered in the System but which had not previously been approved. The FCA did not intend to permit any institution to offer unauthorized services. However, the Agency did not previously approve all types of technical assistance programs which would now come under the definition of related service. Consequently, the proposed regulation included a cautionary statement and a sample list because once the final RS List is published, no service may be offered unless it is on the list. The FCA was not notified during the public comment period of any related service being offered that was not on the sample RS List, thus confirming the Agency's conclusion that all services currently being offered are already on the sample RS List. The only comments received pertaining specifically to the sample RS List focused on how some of the insurance services or special conditions were described on the list. The sample RS List was modified slightly to reflect these suggestions and will be published both as an appendix to the final regulation and in a bookletter subsequent to the finalization of this regulation. (See comments on the RS List at the end of this preamble.)

The ABA commented that no related service should be approved unless the public has at least 60 days to comment on it. Similarly, the IBAA recommended that System institutions be required to file a Notice of Intent, which would state that a related service is going to be offered, in order to allow entities outside the System to object to programs that would place them at a competitive disadvantage. The proposed rule does not require mandatory public comments on all services but allows the FCA to publish new services where appropriate.

While there is no statutory requirement for publication of services or a public notice and comment period, the Agency believes that its evaluation of new services, particularly complex or controversial service proposals, will be aided by public comment. It was for this reason that the FCA published the sample RS List with the proposed regulations. As a result, there is a greater standard of public disclosure than existed previously under the prior approval rule.

However, there may be situations in which public comment is not necessary or beneficial to the safety and soundness of the System and may impose a burden on System institutions while having little, if any, overriding benefit. An example would be a potential service that is very similar to one already on the RS List. Finally, whether or not services are published for comment, the FCA will continue to measure all new service proposals against the statutory authorities and evaluate them based on safety and soundness concerns. Therefore, the proposed regulation was not changed in response to these comments.

Regarding the commenters' desire for public notice of new services and general concerns over competition between System institutions and other banking institutions, Congress authorized such competition when it enacted the related service provisions in 1971. Competition was a major issue at the time the legislation was enacted and one that was thoroughly debated.[2] Public notice and comment requirements were not placed in the Act, and it would not be appropriate for the FCA to limit the offering of related services under the statute simply because offering the service might have a competitive impact on non-System entities. The FCA's mission of ensuring the safety and soundness of System institutions would preclude it from unnecessarily limiting the System's ability to successfully compete with other entities that share its market.

The SCBA is concerned that the regulation permits System institutions to provide services without effective regulatory oversight and congressional scrutiny. It states that the proposal does far more than reduce regulatory burden and is inconsistent with congressional actions dealing with the System, commercial banks, and savings institutions. To the contrary, the FCA believes that the regulation maintains a distinction between determining whether a new service is authorized under the statute and evaluating the feasibility of implementing a particular program at a particular institution. Elimination of the prior approval of each related service program relieves regulatory burden. This does not eliminate the FCA's responsibility for safety and soundness, but merely shifts oversight to the examination and enforcement processes. Determination of statutory authorities continues to be closely controlled in the approval process and, contrary to the SCBA's comment, is not inconsistent with recent congressional actions.

The FCC and four associations expressed concern that System institutions will be precluded from offering a new service because another institution's proposal was previously denied. They asked for clarification on whether the denial or modification of a service proposed by a specific institution is intended to apply to only that institution or to all institutions. While the FCA's intent to consider new services as Systemwide initiatives was clear, they expressed concern that disapproval of a proposed new service would preclude a resubmission that appropriately addresses the reasons for denial. This result was not intended by the Agency. Approvals or denials are not expected to be specific to the institution making the request. Action on new services will generally be based on the *type of service* proposed and not on *how* the service program will be implemented by a given institution. As long as a particular type of service is authorized, it will be put on the RS List, but it could be limited to certain types of institutions or subject to various conditions to address safety and soundness concerns. Notwithstanding this, disapproval of a particular service request does not preclude approval of a different request at another time. The FCA expects, however, that any subsequent request would satisfactorily address the concerns noted in previous disapprovals. There may also be services that either are not authorized under the statute or present so many inherent risks to safety and soundness that it would be inappropriate for any System institution to provide them.

The FCC also commented that if a request for a new service is denied, the notification of denial should include an explanation for the denial. The FCA agrees. While this was intended to be understood in the proposed regulation, proposed § 618.8010(b)(5) has been modified to clarify this point.

The FCC and three associations commented that the process could be improved by requiring the FCA to immediately notify an institution upon receipt of a related service proposal and provide an FCA contact for future reference. Also, once the FCA determines a proposal is complete, the commenters felt the institution should be notified in writing that the 60-day approval process has begun. This suggestion is consistent with existing FCA practices and administrative processes. The FCA intends to provide immediate notification of receipt of a new service proposal, including a preliminary conclusion as to the completeness of the proposal and when the 60-day period begins. If more information is needed later or complex issues arise, such as requesting the charter of a new organization to provide such services, the FCA may choose to extend this period for another 60 days. Because these actions are already a part of FCA's administrative practices, changes were not made to the proposed regulation.

The FCC recommended that the FCA should notify the applying institution of the results of its actions within the 60-day timeframe for acting on proposed new related services. In addition, the FCC suggested that notice of FCA's decision to other System institutions should occur after written notice is given to the requesting institution. The FCA agrees that notification should be included within the 60-day period and that notice to the requesting institution should occur first; § 618.8010(b)(5) has been modified accordingly.

The SCBA and IBAA commented that a well-defined, narrow list of permissible related services should be included in the final rule to prevent unauthorized, and possibly unsound, services from being provided by System institutions. It believes unauthorized services may not be detected in a timely manner through the examination process. They suggested that, at a minimum, institutions should notify the FCA of their intent to offer these services for the first time. The FCA believes that the ''Related Services List'' attached to the final rule is a well-defined list of permissible related services. Proposed § 618.8010(c)(3) would have required institutions to notify the FCA examination team of their intent to offer a service program within 30 days of implementing a related service already on the RS List. The FCA agrees, however, that a prior notification could be beneficial in preventing an unauthorized and possibly unsafe or unsound service program from being implemented because it would give the examiners an opportunity to discuss a proposed service program with the offering institution prior to implementation.

[2] *See*, Pub. L. 92–181 (Dec. 10, 1971) and its legislative history.

Therefore, the final regulation at § 618.8010(c)(3) has been modified to require notification to the FCA 10 business days *before* an institution may begin to offer a service already on the RS List.

The IBAA and the SCBA commented on the elimination of the prior approval of related service programs, the additional elimination of the prior approval of district and bank policies, and the elimination of the requirement for annual bank reviews of association services. The commenters concluded that elimination of these types of oversight activities jeopardizes the safety and soundness of System institutions and weakens the Agency's monitoring and control over System institutions. They further believe that reliance on the examination process alone is inadequate. The IBAA also commented on the removal of the records requirement in the current regulation at § 618.8000(b)(4).

The FCA does not believe that elimination of the FCA prior approval or the annual bank review function creates significant safety and soundness risks, but rather, that the final regulation eliminates duplicative evaluations of authorities to provide new services. Program risks that are incurred by individual institutions offering related services can be adequately controlled by a number of factors, including: (1) Special conditions placed on the RS List for services raising special concerns; (2) mandatory feasibility analysis prior to offering any related service programs; (3) bank oversight and review through feasibility analyses and certain conditions imposed through general financing agreements (GFAs); (4) notification of the appropriate Office of Examination field office before a service is first offered; and (5) periodic examination of program operations and results by the FCA with appropriate follow-up in exercising its supervisory power as warranted. The final regulation and other existing regulations are adequate to address safety and soundness concerns and provide the FCA with appropriate oversight of the process.

4. Section 618.8015—Policy Guidelines

There were no specific comments received on this section of the proposed regulation, and the final regulation is adopted as proposed.

5. Section 618.8020—Feasibility Requirements

Three System commenters stated that the final rule should recognize that the extent of the feasibility analysis required is dependent on whether or not the service is offered for a profit and the overall risks of the service to the institution. The FCA agrees that the extent of the analysis will vary; however, it does not agree that profitability is the sole determining factor. In fact, it is conceivable that a service that is ''low-priced'' or ''free'' to the recipient would still bear a cost to the institution and would require more extensive analysis to justify offering it. The extent of the analysis should be appropriate to the level of institution involvement and the financial and operational risks in a service.

Four other System commenters urged the FCA to explain in its commentary that the final rule could be interpreted as minimizing the regulatory requirements for offering certain types of services. They conclude that services that are normal and customary activities of institutions in their primary business of lending and leasing should be considered inherently feasible and, therefore, not subject to the regulation. The FCA disagrees with the commenters. Although converting a lending-related activity into a fee service will often prove feasible, this will depend on many factors, including market demand, pricing opportunities, and capital position. The cost benefit analysis required by § 618.8020(b) will enable the institution to determine whether offering a fee service will promote its business objectives.

The ABA commented that it believes that the FCA's approach to meeting the statute's feasibility requirement is flawed because the proposed regulatory language does not offer a definition of feasibility but instead states that feasibility is a function of an overall cost/benefit analysis based on the evaluation of the market, pricing, competition, expected financial returns, operational risks, financial liability and conflicts of interest. The commenter further states that the proposed rule does not address issues of managerial and financial capability to provide a related service, i.e., management structure, employee qualifications, and capital position. Lastly, the commenter recommended that a detailed and specific feasibility determination be required from each institution for each related service to be offered. The IBAA also believes that the feasibility criteria are too loose, but it did not elaborate.

The FCA agrees with the commenters that managerial and financial capabilities ought to be addressed in the feasibility analysis. Although the proposed rule contains various managerial and financial assessments, § 618.8020(b)(1) has been modified to include a specific requirement for an evaluation of the consistency of the program with the institution's capital plan. Section 618.8020(b)(3)(i) continues to require ''[a]n evaluation of the operational costs and risks involved in offering the program, such as management and personnel requirements, training requirements, and capital outlays.'' The recommendation for a detailed and specific feasibility determination is also already reflected in the rule. Section 618.8020 begins with a requirement that an institution document program feasibility for every related service program it provides.

Regarding the criticism that the proposed rule offers no definition of feasibility, the FCA believes that the approach taken is comprehensive and will be effective. The final rule specifies the cost and benefit criteria by which feasibility must be determined. It requires an institution to analyze the program against an array of business factors and to document its conclusion that this analysis demonstrates the program's feasibility.

The IBAA urged that the feasibility analysis include a demonstration that a need for the service exists. The FCA believes that a prudent feasibility analysis would necessarily include an evaluation of the market and a discussion of the need for a particular service. In fact, § 618.8020(b)(2) specifically requires an evaluation of market, pricing and competition issues.

6. Section 618.8025—Feasibility Reviews

The proposed rule reduces the role of the bank when an association is offering a related service. The IBAA believes that more oversight should be maintained because association activity ultimately places the bank and, therefore, the taxpayer at risk.[3] In particular, the commenter believes that there is a danger of a bank simply ''rubber stamping'' programs without giving adequate review of feasibility and, therefore, the proposed rule does not meet the statutory requirement. The FCA disagrees with this conclusion. The statute requires the bank to determine the feasibility of each related service offered by an institution, but it is silent regarding who must do the actual feasibility analysis. The most appropriate persons to do the analysis are the persons who will be providing the service. The bank will then fulfill its oversight duties by verifying that the

[3] The FCA notes that pursuant to section 4.4 and other sections of the Act, the United States is not liable for obligations of System institutions. Thus, there is no direct risk to the taxpayers.

analysis is complete and that the analysis establishes the feasibility of the service. The bank also has considerable supervisory control through regulatory and funding mechanisms such as its GFAs. Furthermore, the FCA will be scrutinizing the banks' reviews and general oversight of association and service corporation operations as a part of the examination function.

The IBAA also believes that the FCA should review the feasibility of programs offered by individual associations to ensure safety and soundness. The FCA agrees with this comment and believes that the proposed and final rules do not indicate otherwise. In fact, the preamble to the proposed rule states that the examination function will evaluate compliance, performance, and safety and soundness. The FCA firmly believes that the ongoing examination function is fully capable of protecting the public and the investor.

One System institution proposed that association boards of directors, rather than the district bank, be given the authority to verify and certify the adequacy of program feasibility and concluded that the FCA could issue a cease and desist order if it later determines that the feasibility analysis for a service is incomplete. The FCA clarifies that association boards already have the authority to verify feasibility. In fact, they are expected to approve the offering of all related services and, by doing so, approve the adequacy of the feasibility analysis. In addition, the FCA does not believe that the commenters suggested approach would fulfill the statutory requirement for bank determination of feasibility.

Three System commenters asked for clarification regarding the feasibility analysis for those services that are currently being offered at the time the final rule becomes effective. They also concluded that if a bank review is only needed on a first-time service, then an institution need not resubmit a feasibility analysis for a service that was previously offered.

The FCA agrees that for those services that are being offered prior to the effective date of the final rule, an institution does not need to resubmit a feasibility analysis. However, for those situations where an institution formerly offered a particular service, but is not currently offering it, § 618.8025 has been modified to require bank review of feasibility for any service that an institution did not offer during the most recently completed business cycle (generally 1 year). In other words, in addition to services never offered before, previously offered but currently inactive services will require bank review of the feasibility analysis.

In summary, proposed § 618.8025(a) was modified to require bank review for any service that an institution will be offering that it did not offer during the most recently completed business cycle. Because service corporations are referenced in the definition of ''System banks and associations,'' § 618.8025(b) has been added to require that, prior to offering a related service for the first time, a service corporation's feasibility analysis must be verified by the owners of the service corporation. If the owners all agree, any one bank with significant ownership interest can be delegated this responsibility.

7. Section 618.8030—Out-of-Territory Related Services

One Farm Credit Bank and two affiliated associations raised concerns about providing related services outside of an institution's chartered lending territory. The proposed regulation at § 618.8030 allows System institutions to provide related services outside of their chartered territories, provided they obtain the consent of at least one FCS bank or association authorized to lend (i.e., direct lender) in that territory. Further, the proposed rule does not distinguish between an institution having the right to invite a third party service provider into its territory or consenting to an unsolicited request to offer out-of-territory services.

The commenters are concerned about the competitive implications of allowing such activities and feel the FCA should impose additional conditions beyond simply receiving the consent of at least one institution. They believe the competition will result because most related services will be purchased in conjunction with a lending relationship, and an institution's opportunity to offer out-of-territory services will be broader than the authority to extend credit out-of-territory. While the bank agrees that requiring the consent of all institutions chartered to serve a given territory could interfere with an institution's right to determine what services it wishes to provide its members, it also believes that the related service regulation should not create an unlevel playing field for System institutions sharing the same geographic territory.

The commenters suggest requiring System institutions that want to offer out-of-territory services to offer such services to all institutions sharing the same territory on the same or equitable terms and conditions. They argue that concern for the System's future well-being justifies this additional burden, which they perceive as minimal. The bank suggests that having authority to offer services outside of a chartered lending territory could have a significant impact. The commenter's suggestion would provide each institution with an equal opportunity to negotiate for a service to be provided in its territory. Institutions could decline to authorize another institution to provide services to its customers on its behalf, but no one institution would be in a position to prevent any other FCS institutions from reaching agreements and providing services to their customers.

The FCA understands the commenter's concerns regarding intra-System competition, but it also notes that related services differ from lending and that services are not always offered in the same manner as loan products. While some intra-System competition for loans exists, System institutions are limited by charter to providing specific types of loans for certain purposes (i.e., short-, intermediate-, or long-term loans). By contrast, intra-System competition is inherent in the way eligibility for related services is determined, because related services can be provided to an entity that is ''eligible to borrow'' from an institution. Thus, for example, both PCAs and FLBAs are authorized to provide services to the same borrowers in their chartered territories.

The Agency has concluded that the commenters proposal does not solve many of the problems associated with the additional competition created by out-of-territory related services. Under the commenter's proposal, the requirement for an opportunity to negotiate for the service could lead to cumbersome, protracted negotiations, could pose more than a minimal burden on System institutions, and would still result in only one institution being required to give its consent for an out-of-territory institution to compete with another institution in the territory.

Notwithstanding that some competition inherently exists in providing related services in a given territory, the Agency recognizes that the provision of related services out-of-territory creates the potential for additional intra-System competition. Thus, the Agency believes that the proposed rule should be modified to address some of the issues raised by the commenters. The final regulation has been modified to limit competition without consent in situations where services are already being provided to borrowers. Final § 618.8030(a) provides that an out-of-territory institution must obtain the consent of all chartered institutions currently offering the same

service in the territory in which the service will be provided.

Consent must be obtained regardless of whether the institution is offering the service itself or through an out-of-territory System institution or a third party. If no institution in the territory is offering the same service that the out-of-territory institution wishes to offer, the out-of-territory institution need only obtain the consent of any one direct lender chartered to serve the territory.

The Agency believes that the final regulation balances the territorial rights of institutions, the rights of institutions to control the manner in which they conduct their business, and the needs of borrowers for related services. If borrowers in a territory already have access to a particular related service, there is no compelling need to allow additional competition from an out-of-territory institution without the consent of the institutions currently offering the same services. Although the Agency believes that this is the most appropriate resolution of the out-of-territory issue, the Agency welcomes additional comments on § 618.8030.

Another comment by the IBAA on out-of-territory related services concerned retaining a requirement in the existing rule that the service provided within the offering (out-of-territory) institution's chartered territory remain the primary component of that institution's services. The comment is grounded in terms of cooperative principles in that a key premise for forming a cooperative is to primarily do business with, and for the benefit of, its own members. While the FCA acknowledges this premise, it believes that decisions on business practices are best left to the membership and local boards of directors, rather than the FCA. The restriction advocated by the IBAA could impair the ability of Farm Credit institutions to meet their customers' needs for related services, particularly when the service in question is unique or not widely available from other sources. It should also be noted that a System bank board is free to impose more stringent requirements for their territory (such as is recommended in the three comment letters) than the minimal ones being set forth by the FCA.

Four System associations commented that the proposed relaxation of the limitations on out-of-territory service offerings should be considered in the context of the FCA's proposed policy statement on ''Non-Exclusive Territories'' (59 FR 17543, April 13, 1994). These associations submitted comments on the proposed policy statement earlier in 1994. The FCA considered all of the comments on the proposed policy statement in drafting § 618.8030 and believes the final rule is an appropriate resolution to related service issues at this time. However, the FCA notes that adoption of a final board policy statement on non-exclusive territories may require future changes to the regulation.

The IBAA expressed safety and soundness concerns about permitting System institutions to expand related service programs beyond the boundaries of their chartered lending territories. It stated that the FCA needs to exert oversight in this area if institutions significantly expand programs in large or distant geographic areas. The IBAA believes that allowing institutions to market services nationwide would contradict current statutory language that requires the FCA to charter institutions to serve specific areas.

There are no geographic restrictions in the Act on the ability of the FCA to issue or amend institution charters. *See,* Act, sections 5.17, 1.3, 2.0, and 2.10. In fact, the Agency has the authority to issue nationwide charters or amend an existing charter to authorize nationwide activities. Further, the regulation requires an appropriate feasibility analysis covering an institution's ability to manage its proposed service program operation in all areas where the program is offered. The examination function will ensure that all institution activities, regardless of where conducted, are conducted in a safe and sound manner. Therefore, the FCA does not agree with the IBAA and has made no changes in response to its comments on this issue.

Section 618.8030(d) has been added in order to address service corporations. A service corporation may provide related services outside of its chartered territory (i.e., the chartered territory of its owners) subject to the requirements of § 618.8030(a)–(c). However, service corporations cannot give consent to an out-of-territory institution to offer services in the service corporation's (or its owners) territory.

B. Subpart B—Member Insurance

1. Section 618.8040—Authorized Insurance Services

The IBAA commented that the proposed regulation allows out-of-territory associations to offer credit or term life and credit disability insurance to any individual who has a borrowing relationship with a System institution, but not necessarily with the bank or association selling the insurance. The IBAA is concerned that this will allow a single institution to sell insurance nationwide and believes that such ''expansion'' should not be allowed because System institutions are chartered to serve specific areas and local farmers. As noted earlier, the FCA has the authority to charter institutions to serve specific territories, which may include nationwide charters. Further, the FCA does not agree that this would result in an expansion of insurance services. The proposed and final rule simply permit System institutions to serve their members' needs without obligating each association to have the ability to offer the insurance products itself.

The IBAA disagreed with the FCA's conclusion that the System should be able to sell spouses credit insurance because a spouse may have a contractual liability for the debt by operation of state law. The basis for its disagreement is that the FCA has not established a need for the System to provide such a service. The FCA notes that the insurance would be sold to the borrower, on the life of the spouse, not sold directly to the spouse. There is no statutory requirement that the FCA establish a need for a service before the System is authorized to offer it. However, when an institution decides to offer a particular related service, as a part of its feasibility analysis, it must evaluate the potential market for that service in the areas in which the service will be offered. The FCA directs the commenters to the preamble to the proposed regulation for supporting discussion on this issue (59 FR 54405, October 31, 1994). No change was made to the final regulation in response to this comment.

The IBAA also commented that, by eliminating the requirement that a debtor-creditor relationship exist for System institutions to provide other insurance products, such as crop insurance, and by allowing ''members'' to be eligible to buy crop insurance, the FCA has exceeded congressional intent by allowing the System to provide insurance to non-System borrowers. The FCA notes that the legislative history of section 4.29 of the Act indicates that the debtor-creditor relationship applies only to credit or term life and credit disability insurance (or similar types) in that this insurance must be ''appropriate to protect the loan commitment in the event of death or disability of the debtors.'' *See* 59 FR 54399, October 31, 1994. Therefore, the debtor-creditor requirement for ''other'' insurance was removed in order to allow System institutions to exercise the full authority granted by the Act. As a result, for ''other'' types of insurance, purchasers need only be eligible to borrow (as with other types of related services).

Because section 4.29 of the Act only authorizes borrowers or members to purchase insurance, the Agency felt it was necessary to define ''member'' in the proposed regulation. The FCA did not intend for the definition of member to be interpreted to mean that persons not eligible to borrow could purchase ''other'' insurance from System institutions. In order to clarify this point, the FCA revised the definition of member in § 618.8040(b)(2) of the final rule to include the phrase ''eligible to borrow.''

2. Section 618.8040(b)(6)

Several commenters asked that the 5-percent limitation on compensation for sale of insurance be removed from the final regulation. One association did not object to the 5-percent limitation for full-time loan officers who also sell insurance as a part of their job. However, the commenter felt this limitation was too restrictive for full-time insurance salespersons and those persons involved in direction or management of insurance sales. The association further believes that such a limitation is not needed because the conflict of interest between loan making and insurance is not present, and it argued that such a limitation would restrict its ability to attract and motivate highly qualified insurance personnel.

The FCA continues to believe that unrestricted incentive compensation based on volume of insurance sales may lead to conflicts of interest or coercion in the case of loan officers and other employees involved in the lending operations of an institution. However, the FCA also recognizes that the potential for conflicts of interest or coercion is significantly less with regard to full-time insurance personnel. The FCA also agrees that in the case of full-time insurance sales personnel, such a limitation could impair an institution's ability to attract the best qualified people to these positions. Accordingly, proposed § 618.8040(b)(6) is modified so that, with respect to full-time insurance personnel or full-time managers and supervisors of insurance departments, the 5-percent limitation only applies to the sale of credit life and similar types of insurance (insurance that pays on a loan or mortgage in the event of death or disability of the debtor).

One commenter suggested that the final regulation should include commentary notes stating that insurance is the only service with regulatory restrictions on employee incentive compensation. The FCA does not believe that this is necessary because the regulatory structure and language make it clear that the restriction on employee incentive compensation applies only to insurance.

C. Public Comments Received on the Sample Related Services List

The FCC commented that under Farm Business Consulting and Cooperative Business Consulting Services, the requirement that institutions must have procedures in place to ''ensure conflicts of interest do not occur between the credit and the business consulting functions'' is too burdensome. The FCC suggested that the special condition should require that institution ''policies address and manage conflicts of interest to reduce risk to the entity by avoiding or disclosing certain conflicts as may be appropriate.'' The FCA recognizes that, as stated, the condition could be onerous. The Agency expects institutions to eliminate conflicts of interest whenever possible and operationally feasible. However, there may be instances when such conflicts cannot be eliminated, but with proper operating procedures, can be managed in such a way as to limit the risk posed to the institution to an acceptable level. Language in the attached RS List was modified to more clearly state this requirement.

Minnesota Mutual commented that the sample RS List did not include two types of insurance services, individual term life and mortgage accidental death insurance, currently offered by System institutions. The FCC also commented that ''Group Term Life Insurance'' should be changed to ''Term Life Insurance'' to conform to section 4.29(a)(1) of the Act. Although the FCA intended that these types of insurance be included within those on the RS List, the list has been modified to more accurately reflect these concerns.

The FCC commented that crop hail insurance and multiple-peril crop insurance should be combined into one category of single- and multiple-peril insurance in order to accommodate other types of single-peril crop insurance that may be available or become available in the future. After researching the legislative history of the 1980 amendments to the Act, the FCA believes that it is appropriate to limit the types of crop insurance that the System could sell to hail and multiple-peril crop insurance as is plainly stated in the Act. Accordingly, the FCA did not make this suggested change to the RS List.

As a final note, a small number of technical changes were made to proposed part 618, subparts A and B, in order to enhance the clarity of the regulations. Technical changes were also made to parts 611 and 620 in order to conform with the regulatory changes in part 618.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 611, 618, and 620 of chapter VI, title 12 of the Code of Federal Regulations are amended to read as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.21, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2209, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003 and 1004.

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

§ 611.1125 [Amended]

2. Section 611.1125 is amended by removing the word ''financially'' in paragraph (b)(2).

PART 618—GENERAL PROVISIONS

3. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

§ 618.8030 [Redesignated as 618.8040]

4. In subpart B, § 618.8030 is redesignated as new § 618.8040.

5. Subpart A is revised to read as follows:

Subpart A—Related Services

Sec.

618.8000 Definitions.
618.8005 Eligibility.
618.8010 Related services authorization process.
618.8015 Policy guidelines.
618.8020 Feasibility requirements.

618.8025 Feasibility reviews.
618.8030 Out-of-territory related services.

Subpart A—Related Services

§ 618.8000 Definitions.

For the purposes of this subpart, the following definitions shall apply:

(a) *Program* means the method or procedures used to deliver a related service. This distinguishes the particulars of how a related service will be provided from the type of activity or concept.

(b) *Related service* means any service or type of activity provided by a System bank or association that is appropriate to the recipient's on-farm, aquatic, or cooperative operations, including control of related financial matters. The term ''related service'' includes, but is not limited to, technical assistance, financial assistance, financially related services and insurance, but does not include lending or leasing activities.

(c) *System banks and associations* means Farm Credit Banks, agricultural credit banks, banks for cooperatives, agricultural credit associations, production credit associations, Federal land bank associations, Federal land credit associations, and service corporations formed pursuant to section 4.25 of the Act.

§ 618.8005 Eligibility.

(a) Farm Credit Banks and associations may offer related services to persons eligible to borrow as defined in §§ 613.3010, 613.3020 (a)(1), (a)(2), (b), and 613.3045 of this chapter.

(b) Banks for cooperatives may offer related services to entities eligible to borrow as defined in §§ 613.3110 and 613.3120 of this chapter.

(c) Agricultural credit banks may offer related services appropriate to on-farm and aquatic operations of persons eligible to borrow specified in paragraph (a) of this section and may offer related services appropriate to cooperative operations of entities eligible to borrow as specified in paragraph (b) of this section.

(d) Service corporations formed pursuant to section 4.25 of the Act may offer related services to persons eligible to borrow from the owners of the service corporation, pursuant to paragraphs (a), (b), (c), and (e) of this section.

(e) System banks and associations may provide related services to recipients that do not otherwise meet the requirements of this section in connection with loan applications, loan servicing, and other transactions between these recipients and persons eligible to borrow as defined in paragraphs (a), (b), or (c) of this section, as long as the service provided is requested by an eligible borrower or necessary to the transaction between the parties. Such services include, but are not limited to, fee appraisals of agricultural assets provided to any Federal agency, commercial banks, and other lenders.

§ 618.8010 Related services authorization process.

(a) *Authorities.* System banks and associations may only offer related services that meet the criteria specified in this regulation and are authorized by the FCA.

(b) *New service proposals.* (1) A System bank or association that proposes or intends to offer a related service that the FCA has not previously authorized must submit to the FCA, in writing, a proposal that includes a description of the service, a statement of how it meets the regulatory definition of ''related services'' in § 618.8000(b), and the risk analysis cited in § 618.8020(b)(3). The FCA will evaluate the proposed service based on the information submitted, and may also consider whether there are extenuating circumstances or other compelling reasons that justify the proposed service or support a determination that the service is not authorized. This evaluation will focus primarily on Systemwide issues rather than on institution or program-specific factors.

(2) When authorizing a proposed related service, at its discretion, the FCA may impose special conditions or limitations on any related service or program to offer a related service.

(3) At its discretion the FCA may, at any time during its evaluation of a proposed related service, publish the proposed related service in the **Federal Register** for public comment.

(4) Within 60 days of the FCA receiving a completed proposal, including any additional information the FCA may require, the FCA will act on the request to authorize a new service. The FCA shall approve the request, deny the request, or publish the service for public comment in the **Federal Register**. For good cause and prior to the expiration of the 60 days, the FCA may extend this period for an additional 60 days.

(5) Within the time period established in paragraph (b)(4) of this section, the FCA shall notify the requesting institution of its actions. Following notification of the requesting institution, the FCA will notify all System banks and associations of its determination on the proposed service by bookletter or other means. If a service is not authorized, the reasons for denial will be included in the notifications to the System and the requesting institution.

(c) *Previously authorized services.* (1) For related services that have been authorized by the FCA, any System bank or association may develop a program and subsequently offer the related service to eligible recipients, subject to any special conditions or institutional limits placed by the FCA. These programs will be subject to review and evaluation during the examination and enforcement process.

(2) The FCA shall make available to all System banks and associations a list of such related services (''related services list'' or ''list'') and will update the list in accordance with paragraph (b)(5) of this section. The list will contain the following:

(i) A description of each related service; and

(ii) The types of institutions authorized to offer each type of related service;

(iii) Identification of any special conditions on how the related service may be offered. The special conditions and description of the service will be fully detailed in FCA's notice to System institutions under paragraph (b)(5) of this section.

(3) At least 10 business days prior to implementing a related service program already on the list, the System bank or association must notify the FCA Office of Examination field office responsible for examining that institution in writing and provide it with a description of the proposed related service program.

§ 618.8015 Policy guidelines.

(a) The board of directors of each System bank or association providing related services must adopt a policy addressing related services. The policy shall include clearly stated purposes, objectives, and operating parameters for offering related services and a requirement that each service offered be consistent with the institution's business plan and long-term strategic goals. Such policy shall also be subject to review under an appropriate internal control policy.

(b) All related services must be offered to recipients on an optional basis. If the institution requires a related service as a condition to borrow, it must inform the recipient that the related service can be obtained from the institution or from any other person or entity offering the same or similar related services.

(c) All fees for related services must be separately identified from loan interest charges and disclosed to the recipient of the service prior to providing or implementing the service.

§ 618.8020 Feasibility requirements.

For every related service program a System bank or association provides, it must document program feasibility. The feasibility analysis shall include the following:

(a) Support for the determination that the related service is authorized; and

(b) An overall cost-benefit analysis that demonstrates program feasibility, taking into consideration the following items:

(1) An analysis of how the program relates to or promotes the institution's business plan and strategic goals, and whether offering the service is consistent with the long-term goals described in its capital plan;

(2) An analysis of the expected financial returns of the program which, at a minimum, must include an evaluation of market, pricing, competition issues, and expected profitability. This analysis should include an explanation of how the program will contribute to the overall financial health of the institution; and

(3) An analysis of the risk in the program, including:

(i) An evaluation of the operational costs and risks involved in offering the program, such as management and personnel requirements, training requirements, and capital outlays;

(ii) An evaluation of the financial liability that may be incurred as a result of offering the program and any insurance or other measures that are necessary to minimize these risks; and

(iii) An evaluation of the conflicts of interest, whether real or perceived, that may arise as a result of offering the program and any steps that are necessary to eliminate or appropriately manage these conflicts.

§ 618.8025 Feasibility reviews.

(a) Prior to an association offering a related service program for the first time, the board of directors of the funding bank must verify that the association has performed a feasibility analysis pursuant to § 618.8020. The bank review is limited to a determination that the feasibility analysis is complete and that the analysis establishes that it is feasible for the association to provide the program. Any conclusion by the bank that the feasibility analysis is incomplete or fails to demonstrate program feasibility must be fully supported and communicated to the association in writing within 60 days of its submission to the bank.

(b) Prior to a service corporation offering a service for the first time or offering a service that it did not offer during the most recently completed business cycle (generally 1 year), the owners of the service corporation must verify that the service corporation has performed a feasibility analysis pursuant to § 618.8020. If the owners all agree, one bank with a significant ownership interest can be delegated this responsibility.

§ 618.8030 Out-of-territory related services.

(a) System banks and associations may offer related services outside their chartered territories subject to the following conditions:

(1) The System bank or association obtains consent from all chartered institutions currently offering the same type of service in the territory in which the service is to be provided; or

(2) If no System bank or association is currently offering the same type of service in the territory, then the out-of-territory institution must obtain the consent of at least one direct lender institution chartered in the territory in which the related service is to be provided.

(3) The consent obtained pursuant to paragraphs (a)(1) and (a)(2) of this section shall be in the form of a written agreement with specific terms and conditions including timeframes.

(b) System banks and associations providing out-of-territory services must fulfill all requirements of subparts A and B of this part 618.

(c) An institution that consents to another bank or association providing a related service in its chartered territory must meet the requirements of this section, but need not comply with the other requirements of subparts A and B of this part 618, unless the program consented to imposes a financial obligation on the consenting institution. If a financial obligation exists, then the consenting institution must comply with §§ 618.8015, 618.8020 and 618.8025.

(d) Service corporations must follow the requirements of this section in offering related services out-of-territory. A service corporation cannot consent to an out-of-territory institution providing services in its chartered territory.

6. Newly designated § 618.8040 is amended by revising paragraph (b)(1); by removing paragraph (b)(10); by redesignating existing paragraphs (b)(2) through (b)(9) as new paragraphs (b)(3) through (b)(10); by adding a new paragraph (b)(2); by removing the reference ''§ 618.8030(b)(3)(i)'' and adding in its place, the reference ''§ 618.8040(b)(4)(i)'' in newly designated paragraph (b)(3); and by revising newly designated (b)(6) to read as follows:

Subpart B—Member Insurance

§ 618.8040 Authorized insurance services.

* * * * *

(b) Bank and association board policies governing the provision of member insurance programs shall be established within the following general guidelines:

(1) A System bank or association may provide credit or term-life or credit-disability insurance only to persons who have a loan or lease with any System bank or association, without regard to whether such institution is the provider. Term-life insurance coverage may continue after the loan has been repaid or the lease terminated, provided the member can reasonably be expected to borrow again within 2 years, and provided the continuation of insurance is not contrary to state law.

(2) A debtor-creditor relationship is not required for the sale of other insurance specified in paragraph (a) of this section, as long as purchasers are members of a System bank or association. For the purposes of this section, ''member'' means someone eligible to borrow who is a stockholder or participation certificate holder and who acquired stock or participation certificates to obtain a loan, for investment purposes, or to qualify for other services of the association or bank.

* * * * *

(6) Bank and association personnel shall not benefit from insurance sales by receipt of commissions or gifts from underwriting insurance companies. However, employees may participate in an incentive plan under which incentive compensation is provided based on the sale of insurance.

(i) In any single year, for all employees except full-time insurance personnel or full-time supervisors or managers of insurance departments, incentive compensation attributable to sales of all types of insurance cannot exceed an amount equivalent to 5 percent of the recipient's annual base salary.

(ii) In any single year, for full-time insurance personnel and full-time supervisors and managers of insurance departments, incentive compensation for sales of credit life and similar types of insurance (i.e. insurance that pays on a loan or mortgage upon the death or disability of the debtor) cannot exceed an amount equivalent to 5 percent of the recipient's annual base salary.

(iii) No incentive compensation limit applies to sales of other insurance (crop, title, etc.) by full-time insurance personnel or full-time supervisors or managers of insurance departments.

* * * * *

PART 620—DISCLOSURE TO SHAREHOLDERS

7. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa-11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart B—Annual Report to Shareholders

§ 620.5 [Amended]

8. Section 620.5 is amended by removing the word ''financial'' and adding in its place, the word ''related'' each place it appears in paragraph (a)(3).

Dated: June 26, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

BILLING CODE 6705–01–P

APPENDIX A (TO THE PREAMBLE)--RELATED SERVICES LIST[1]

Authorized Institutions	Type of Service	Description[2]	Special Conditions
ACB (Title I and II), FCB, ACA, PCA, FLBA, FLCA, SC	Estate Planning Service	Providing information and assistance concerning development of estate plans. Does not include providing legal counsel or advice or executing the estate planning documents.	
ACB, FCB, BC, ACA, PCA, FLBA, FLCA, SC	Fee Appraisal Service	Providing real and personal property appraisals and evaluations. (Note: appraisals done in conjunction with making or servicing System loans are not considered related services for the purpose of this regulation.)	
ACB, FCB, BC, ACA, PCA, FLBA, FLCA, SC	Recordkeeping Service (including Agrifax®)	Providing record keeping systems tailored to recipients' needs.	
ACB, FCB, BC, ACA, PCA, FLBA, FLCA, SC	Tax Planning and Preparation	Preparing tax returns and assisting recipients in understanding tax implications of alternative management decisions and strategies.	
ACB (Title 1 and II), FCB, ACA, PCA, FLBA, FLCA, SC	Farm Business Consulting	Assisting with business planning for on-farm or aquatic operations. Includes such activities as assisting individuals in defining business goals, identifying management problems, and formulating or analyzing alternative strategies for achieving goals. Institution personnel may not be involved in making management decisions.	Institutions must have procedures in place to eliminate or, where appropriate, effectively manage conflicts of interest between the credit and business consulting functions.
ACB (Title III), BC, SC	Cooperative Business Consulting	Providing consulting services to cooperatives or other eligible recipients to assist management and directors in making business decisions. May include educational seminars, development of computer services, business analysis, feasibility studies, and activity coordination (e.g., coordination of activities on mergers or formation of joint ventures). Institution personnel may not be involved in making management decisions.	Institutions must have procedures in place to eliminate or, where appropriate, effectively manage conflicts of interest between the credit and business consulting functions.
ACB (Title III), BC	Foreign Currency Exchange	Providing foreign currency exchange services necessary to individual transactions that may be financed under Title III, section 3.7(b) of the Farm Credit Act of 1971, as amended.	Subject to the criteria under 12 CFR 614.4900.
ACB (Title III), BC	Financial Risk Management for Customers	Providing risk management products that enable customers to hedge interest rate risk inherent in their balance sheets. Limited to the following derivative products: • Interest rate swaps, caps, collars and floors; • Forward rate agreements; and • Exchange-traded and over-the-counter interest rate options on eligible interest rate futures contracts	(1) Interest rate swaps should be included with the borrower's total debt when calculating lending limits under 12 CFR part 614, subpart J. For swaps where the bank keeps an offsetting position, it must include the credit risk of the swaps with the borrower's total debt when calculating lending limits.

APPENDIX A (TO THE PREAMBLE)--RELATED SERVICES LIST[1]

Authorized Institutions	Type of Service	Description[2]	Special Conditions
ACB (Title III), BC	Financial Risk Management for Customers (Cont'd)	(Products may be offered as part of loan packages or as stand-alone hedging tools.)	Credit limits for each counter-party should be determined by reviewing the potential magnitude of adverse payment increases over the life of the swap. (2) Financial risk management programs are subject to annual audits by a Certified Public Accountant.
ACB (Title I and II), FCB, ACA, PCA, FLBA, FLCA	Credit Life Insurance, Mortgage Life Insurance, or Mortgage Accidental Death Insurance	Coverage that pays off or reduces an outstanding loan or mortgage in the event of the insured's death.	
ACB (Title I and II), FCB, ACA, PCA, FLBA, FLCA	Term Life Insurance	Group or individual term life insurance coverage that is renewable at the end of the term.	
ACB (Title I and II), FCB, ACA, PCA, FLBA, FLCA	Credit Disability and Accident Insurance or Mortgage Disability Insurance	Insurance that provides for loan or mortgage payments, or some degree of income protection, if the insured is disabled.	
ACB (Title I and II), FCB, ACA, PCA, FLBA, FLCA	Hospital Income Insurance	Insurance that provides a specified amount of income while the insured is hospitalized. A form of credit disability insurance, and subject to the debtor-creditor requirement.	
ACB (Title I and II), FCB, ACA, PCA, FLBA, FLCA	Multiple-Peril Crop Insurance (including insurance provided by the Federal Crop Insurance Corporation)	Insurance covering hazards incident to the growing and storage of crops.	
ACB (Title I and II), FCB, ACA, PCA, FLBA, FLCA	Crop Hail Insurance	Insurance providing protection against damage or loss of crops due to hail or certain other named perils.	
ACB (Title I and II), FCB, ACA, PCA, FLBA, FLCA	Hay (or Other Crop) Fire Insurance	Insurance that covers loss of hay or other crops due to fire.	
ACB (Title I and II), FCB, ACA, PCA, FLBA, FLCA	Title Insurance	Insurance against loss or damage resulting from defects or failure of title or from the enforcement of liens existing against title at the time of the insurance.	

1. The RS List is included as an attachment to this Federal Register document for informational purposes only.

2. For services added to the RS List after the effective date of the attached regulation at 12 CFR part 618, a more detailed explanation of the description and special conditions can be found in the notification to all System institutions required by § 618.8010(b)(5).

[FR Doc. 95–16097 Filed 6–29–95; 8:45 am]

BILLING CODE 6705–01–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 123CE, Special Condition 23–ACE–80]

Special Conditions; SIAI Marchetti Model S211A Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are being issued for the SIAI Marchetti Aircraft Company Model S211A airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These design features include performance characteristics for which the applicable regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the current airworthiness standards.

EFFECTIVE DATE: June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Mike Downs, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 1993, the SIAI Marchetti Aircraft Co., VIA Indipendenza, 2, 21018 Sesto Calende (VA) [ITALY] made application for acrobatic category type certification of the Model S211A airplane. The S211A is a two-place (tandem), all metal, mid-wing cantilevered, retractable gear, pressurized, single turbofan engine airplane with a maximum weight of 6,394 pounds intended for specialized military operations as a 14 CFR part 23 airplane in the Acrobatic Category.

Type Certification Basis

Type certification basis of the SIAI Marchetti Model S211A airplane is as follows: Federal Aviation Regulations (14 CFR Part 23), effective February 1, 1965, through amendment 23–44, effective August 18, 1993; Equivalent Level of Safety for §§ 23.562, 23.677(a), 23.777(f)(1), 23.807(b)(5), 23.841(a) and (b)(6), 23.971 (a) and (b), 23.1182, 23.1557(d); 14 CFR Part 34, effective September 10, 1990; 14 CFR Part 36, effective December 1, 1969, through amendment effective on the date of type certification; exemptions if any; and the special conditions adopted by this rulemaking action.

Discussion

SIAI Marchetti plans to incorporate certain novel and unusual design features into the airplane for which the airworthiness regulations do not contain adequate or appropriate safety standards. These features include certain performance characteristics necessary for this type of airplane that were not envisaged by the existing regulations.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with 14 CFR Part 21, § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with 14 CFR Part 11, § 11.49 after public notice, as required by §§ 11.28 and 11.29 and become a part of the type certification basis, as provided by 14 CFR Part 21, § 21.17(a)(2).

Flight

Current standards in 14 CFR part 23 did not envisage this type of airplane and the associated performance capabilities. Based upon the knowledge and experience gained during certification and operation of previous 14 CFR Part 23 acrobatic jet airplanes and other acrobatic airplanes, special conditions that include selected Joint Airworthiness Regulations (JAR) 23, Issue 1, dated March 11, 1994, are proposed instead of selected performance requirements of subpart B of part 23.

Operating Limitations and Information

Current standards in part 23 did not envisage this type of airplane and the associated performance.

To maintain a level of safety consistent with other acrobatic category and jet powered airplanes, special conditions that include selected JAR 23, Issue 1, dated March 11, 1994, are proposed instead of the flight manual requirements of subpart G of Part 23.

Discussion of Comments

Notice of Proposed Special Conditions, Notice No. 23–ACE–80, was published in the **Federal Register** on March 20, 1995, and no comments were received. These special conditions are adopted as proposed with minor editorial corrections.

Under standard practice, the effective date of these special conditions would be 30 days after publication in the **Federal Register**. As the intended U.S. type certification date for the SIAI Marchetti Model S211A is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action is not a rule of general applicability and affects only the model of airplane and the manufacturer identified in these special conditions.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the SIAI Marchetti Model S211A airplane.

1. Flight

Instead of compliance with the sections listed below contained in Subpart b of part 23, the following sections apply:

SC23.45 Performance—General.

(a) The performance requirements of this subpart must be met for: Still air; and Ambient atmospheric conditions.

(b) Unless otherwise prescribed, performance data must be provided over not less than the following ranges of conditions:

(1) Airport altitude from sea level to 10,000 feet; and

(2) Temperature from standard to 30 °C above standard, or the maximum ambient atmospheric temperature at which compliance with the cooling provisions 14 CFR part 23, §§ 23.1041 to 23.1045 is shown, if lower.

(c) Performance data must be determined with the means for controlling the engine cooling air supply in the position used in the cooling tests required by §§ 23.1041 to 23.1045.

(d) The available propulsive thrust must correspond to engine thrust not exceeding the approved thrust, less:

(1) Installation losses; and

(2) The equivalent thrust absorbed by the accessories and services appropriate to the particular ambient atmospheric conditions and the particular flight condition.

(e) The performance as affected by engine thrust must be based on a relative humidity of—

(1) 80 percent at and below standard temperature; and

(2) 34 percent at and above standard temperature plus 50 °F. Between the two temperatures the relative humidity must vary linearly.

(f) Unless otherwise prescribed in determining the takeoff and landing distances, changes in the airplane's configuration, speed and thrust must be made in accordance with procedures established by the applicant for operation in service. The procedures must be able to be executed consistently by pilots of average skill in atmospheric conditions reasonably expected to be encountered in service.

(g) The takeoff and landing distances must be determined on a smooth dry hard-surfaced runway. The effect on these distances of operation on other types of surface (for example, grass, gravel) when dry, may be derived and these surfaces listed under SC23.1583(o).

SC23.51 Takeoff speeds.

(a) The rotation speed V_R, is the speed at which the pilot makes a control input with the intention of lifting the airplane out of contact with the runway. V_R must not be less than V_{S1}.

(b) The speed at 50 feet must not be less than the highest of—

(1) A speed that is shown to be safe under all reasonably expected conditions, including turbulence and complete engine failure; or

(2) 1.20 V_{S1}.

SC23.53 Takeoff distance.

(a) The takeoff distance must be determined in accordance with subparagraph (b), using speeds determined in accordance with SC23.51 (a) and (b).

(b) The distance required to take off and climb to a height of 50 feet above the takeoff surface must be determined for each weight, altitude and temperature within the operational limits established for takeoff with—

(1) Takeoff thrust;

(2) Wing flaps in the takeoff positions(s); and

(3) Landing gear extended.

SC23.63 Climb: general.

(a) Compliance with the requirements of SC23.65, SC23.69, and SC23.77 must be shown:

(1) Out of ground effect; and

(2) Act speeds that are not less than those at which compliance with the powerplant cooling requirements of §§ 23.1041 to 23.1045 have been demonstrated.

(b) Compliance must be shown, at weights, as a function of airport altitude and ambient temperature, within the operational limits established for takeoff and landing respectively, with—

(1) SC23.65 for takeoff, and

(2) SC23.77 for landing.

SC23.65 Climb: all engines operating.

The airplane must have a steady gradient of climb after takeoff of at least 4 percent with—

(a) Takeoff thrust;

(b) Landing gear extended except that, if the landing gear can be retracted in not more than 7 seconds, it may be assumed to be retracted;

(c) Wing flaps in the takeoff position(s); and

(d) A climb speed not less than 1.2 V_{S1}.

SC23.69 Enroute climb/descent.

(a) All engines operating.

The study gradient and rate of climb must be determined at each weight, altitude and ambient temperature within the operational limits established by the applicant with—

(1) Not more than maximum continuous thrust;

(2) Landing gear retracted;

(3) Wing flaps retracted; and

(4) Climb speed not less than 1.3 V_{S1}.

SC23.71 Glide (Single Engine Airplanes).

The maximum horizontal distance traveled in still air, in nautical miles per 1,000 feet of altitude lost in a glide, and the speed necessary to achieve this, must be determined with the engine inoperative and with the landing gear and wing flaps in the most favorable position available.

SC23.73 Reference landing approach speed.

The reference landing approach speed, V_{REF}, must not be less than 1.3 V_{SO}.

SC23.75 Landing distance.

The horizontal distance necessary to land and come to a complete stop from a point 50 feet above the landing surface must be determined, for standard temperatures at each weight and altitude within the operational limits established for landing, as follows:

(a) A steady approach at not less than V_{REF} must be maintained down to the 50-foot height and

(1) The study approach must be at a gradient or descent not greater than 5.2 percent (3 degrees) down to the 50-foot height; and

(2) In addition, an applicant may demonstrate by tests that a maximum steady approach gradient, steeper than 5.2 percent, down to the 50-foot height is safe. The gradient must be established as an operating limitation and the information necessary to display the gradient must be available to the pilot by an appropriate instrument.

(b) A constant configuration must be maintained throughout the maneuver.

(c) The landing must be made without excessive vertical acceleration or tendency to bounce, nose-over, ground loop, or porpoise.

(d) It must be shown that a safe transition to the balked landing conditions of SC23.77 can be made from the conditions that exist at the 50-foot height, at maximum landing weight or the maximum landing weight for altitude and temperature of SC23.63(b)(2), as appropriate.

(e) The brakes must not be used so as to cause excessive wear of brakes or tires.

(f) Retardation means other than wheel brakes may be used if that means—

(1) Is safe and reliable;

(2) Is used so that consistent results can be expected in service.

SC23.77 Balked landing.

The steady gradient of climb must not be less than 2.5 percent with—

(a) Not more than the thrust that is available 8 seconds after initiation of movement of the thrust controls from the minimum flight idle position;

(b) The landing gear extended;

(c) The wing flaps in the landing position; and

(d) A climb speed equal to V_{REF}, as defined in SC23.73.

2. Operating Limitations and Information

Instead of compliance with the sections listed below contained in Subpart G of part 23, the following sections apply:

Airplane Flight Manual

SC23.1581 General.

(a) An FAA-Approved Airplane Flight Manual must be furnished with each airplane and it must contain the following:

(1) Information required by SC23.1583 through SC23.1589.

(2) Other information that is necessary for safe operation because of design, operating or handling characteristics.

(3) Further information necessary to comply with the relevant operating rules.

(b) Each part of the Airplane Flight Manual containing information prescribed in SC23.1583 through SC23.1589 must be approved, segregated, identified, and clearly distinguished form each unapproved part of that Airplane Flight Manual.

(c) The units used in the Airplane Flight Manual must be the same as those marked on the appropriate instruments and placards.

(d) All Airplane Flight Manual operational airspeeds must, unless otherwise stated, be presented as indicated airspeeds.

(e) Provisions must be made for stowing the Airplane Flight Manual in a suitable fixed container that is readily accessible to the pilot.

(f) Each Airplane Flight Manual must contain a means for recording the incorporation of revisions and/or amendments.

SC23.1583 Operating limitations.

The Airplane Flight Manual must contain operating limitations determined under the applicable regulations, including the following:

(a) Airspeed limitations.

(1) Information necessary for the marking of the airspeed limits on the indicator as required in § 23.1545, and the significance of each of those limits and of the color coding used on the indicator.

(2) The speeds V_O, V_{LE}, and V_{LO} and their significance.

(b) Powerplant limitations.

(1) Limitations required by § 23.1521.

(2) Explanation of the limitations, when appropriate.

(3) Information necessary for marking the instruments required by §§ 23.1549 through 23.1553.

(c) Weight.

(1) The maximum weight; and

(2) The maximum landing weight, if the design landing weight selected by the applicant is less than the maximum weight.

(3) The maximum takeoff weight for each airport altitude and ambient temperature within the range selected by the applicant not exceeding the weight at which the airplane complies with the climb requirements of SC23.63(b)(1).

(4) The maximum landing weight for each airport altitude and ambient temperature within the range selected by the applicant not exceeding the weight at which the airplane complies with the climb requirements of SC23.63(b)(2).

(5) The maximum zero fuel weight, where relevant.

(d) Center of gravity. The established center of gravity limits.

(e) Maneuvers. The following authorized maneuvers, appropriate airspeed limitations, and unauthorized maneuvers, as prescribed in this section:

(1) A list of approved acrobatic flight maneuvers demonstrated in the type flight tests, together with recommended entry speeds and any other associated limitations.

(2) Spin recovery procedure established to show compliance with § 23.221.

(f) Maneuver load factor. The positive and negative limit load factors in g's.

(g) Minimum flight crew. The number and functions of the minimum flight crew determined under § 23.1523.

(h) Kinds of operation. A list of the kinds of operation to which the airplane is limited or from which it is prohibited under § 23.1525, and also a list of installed equipment that affects any operating limitation and identification as to the equipment's required operational status for the kinds of operation for which approval has been granted.

(i) Maximum operating altitude. The maximum altitude established under § 23.1527.

(j) Allowable lateral fuel loading. The maximum allowable lateral fuel loading differential, if less than the maximum possible.

(k) Baggage cargo loading. The following information for each baggage and cargo compartment or zone;

(1) The maximum allowable load; and

(2) The maximum intensity of loading.

(l) Systems. Any limitations on the use of airplane systems and equipment.

(m) Ambient temperatures. Where appropriate, maximum and minimum ambient air temperatures for operation.

(n) Smoking. Any restrictions on smoking in the airplane.

(o) Types of surface. A statement of the types of surface on which operations may be conducted must be provided.

SC23.1585 Operating procedures.

Information concerning normal, abnormal (if applicable) and emergency procedures, and other pertinent information necessary for safe operation and the achievement of the scheduled performance, must be furnished, including:

(a) An explanation of significant or unusual flight or ground handling characteristics.

(b) The maximum demonstrated values of crosswind for takeoff and landing and procedures and information pertinent to operations in crosswinds.

(c) Procedures, speeds, and configuration(s) for making a normal takeoff in accordance with SC23.51 and SC23.53 and the subsequent climb in accordance with SC23.65 and SC26.59.

(d) Procedures for abandoning a takeoff due to engine failure or other cause.

(e) A recommended speed for flight in rough air. This speed must be chosen to protect against the occurrence, as a result of gusts, of structural damage to the airplane and loss of control (for example, stalling).

(f) Procedures, speeds, and configuration(s) for making a normal approach and landing in accordance with SC23.73 and SC23.75 and a transition to the balked landing condition.

(g) Procedures for restarting the engine in flight, including the effects of altitude.

(h) The procedures, speeds and configurations for a glide following engine failure in accordance with SC23.71 and the subsequent forced landing, must be furnished.

(i) For each airplane showing compliance with § 23.1353 (g)(2) or (g)(3), the operating procedures for disconnecting the battery from its charging source must be furnished.

(j) Information on the total quantity of usable fuel for each fuel tank and the effect on the unusable fuel quantity as a result of a failure of any pump, must be furnished.

(k) Procedures for the safe operation of the airplane's systems and equipment, both in normal use and in the event of malfunction, must be furnished.

SC23.1587 Performance information

Unless otherwise prescribed, the following information must be furnished over the altitude and temperature ranges required by SC23.45(b):

(a) The stalling speeds V_{SO}, and V_{S1} with the landing gear and wing flaps retracted, determined at maximum weight under § 23.49 and the effect on these stalling speeds of angles of bank up to 60 degrees.

(b) The takeoff distance, determined under SC23.53 and the type of runway surface for which it is valid.

(c) The steady rate and gradient of climb with all engines operating, determined under SC23.69(a).

(d) The landing distance, determined under SC23.75, and the type of runway surface for which it is valid.

(e) The effect on takeoff and landing distances of operation on other than smooth hard surfaces, when dry, determined under SC23.45(g).

(f) The effect on takeoff and landing distances or runway slope and 50 percent of the headwind component and 150 percent of the tailwind component.

(g) The steady gradient of climb/descent, determined under SC23.66.

(h) The glide performance determined under SC23.71.

§ SC23.1589 Loading information.

The following loading information must be furnished:

(a) The weight and location of each item of equipment that can easily be removed, relocated, or replaced and that is installed when the airplane was weighed under § 23.25.

(b) Appropriate loading instructions for each possible loading condition between the maximum and minimum weights established under § 23.25, to facilitate the center of gravity remaining within the limits established under § 23.23.

Issued in Kansas City, Missouri on June 16, 1995.

Henry A. Armstrong,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–16163 Filed 6–29–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 94–NM–120–AD; Amendment 39–9279; AD 95–12–26]

Airworthiness Directives; Boeing Model 747SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747SP series airplanes, that currently requires repetitive inspections for cracks in the web of the wing front spar over engine numbers 2 and 3, and repair, if necessary. This amendment requires additional inspections in an area beyond that specified in the existing AD. This action also would provide for a new, optional modification, which, if accomplished, would constitute terminating action for the repetitive inspections. This amendment is prompted by a report of cracking in the web in an area outside the inspection zone specified in the existing AD. A crack in the web that is not detected before it extends outside the chord footprints can allow fuel leakage. The actions specified by this AD are intended to prevent fuel leakage onto an engine and a resultant fire due to cracking in the web of the wing front spar.

DATES: Effective July 31, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 31, 1995.

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: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 90–17–18, amendment 39–6702 (55 FR 33279, August 15, 1990), which is applicable to certain Boeing Model 747SP series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on February 21, 1995 (60 FR 9645). The action proposed to require repetitive inspections to detect cracks in the web of the wing front spar in an area beyond that specified in the existing AD, and modification, if cracking is found. The action also proposed to provide for a new, optional modification, which, if accomplished, would constitute terminating action for the repetitive inspections.

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

The commenter supports the proposed rule.

Since the issuance of the supplemental NPRM, the manufacturer completed development of the modification program for the engine struts on the affected airplanes; subsequently, the FAA approved that program. On May 10, 1995, the FAA issued AD 95–10–16, amendment 39–9233 (60 FR 27008, May 22, 1995), which is applicable to Boeing Model 747 series airplanes equipped with JT9D–3 and -7 series engines, including those airplanes affected by this AD. That AD requires incorporation of the modification program discussed previously. Paragraph (e) of this final rule has been revised to indicate that installation of a terminating modification in accordance with AD 95–10–16, amendment 39–9233, constitutes terminating action for the requirements of this AD.

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

There are approximately 35 Model 747SP series airplanes of the affected design in the worldwide fleet. The FAA estimates that 11 airplanes of U.S. registry will be affected by this AD. The FAA estimates that it will take approximately 22 work hours per airplane to accomplish the required inspections (between front spar stations 628 and 675) specified in this AD, 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 $14,520, or $1,320 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.

Should an operator elect to accomplish the terminating modification that is provided by this AD action, it will take approximately 644 work hours to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts will be $21,800. Based on these figures, the total cost impact of the terminating modification will be $60,440 per airplane.

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 39–6702 (55 FR 33279, August 15, 1990), and by adding a new airworthiness directive (AD), amendment 39–9279, to read as follows:

95–12–26 BOEING: Amendment 39–9279. Docket 94–NM–120–AD. Supersedes AD 90–17–18, Amendment 39–6702.

Applicability: Model 747SP series airplanes; variable numbers RG001 through RG142 inclusive, and RG171 through RG222 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 (f) 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.

To prevent fuel leakage onto an engine and a resultant fire, accomplish the following:

(a) For airplanes on which the ''terminating modification'' [between front spar station (FSS) 640 and FSS 670] specified in Boeing Alert Service Bulletin 747–57A2259, dated February 15, 1990; or Revision 1, dated September 6, 1990; has not been accomplished: Within the next 6 months after September 21, 1990 (the effective date

of AD 90–17–18, amendment 39–6702), perform a visual and an ultrasonic inspection of the front spar web between FSS 636 and FSS 675, in accordance with Boeing Alert Service Bulletin 747–57A2259, dated February 15, 1990; or Revision 1, dated September 6, 1990. If no crack is found, repeat these inspections at intervals not to exceed 1,000 landings until the inspections required by paragraph (b) of this AD are accomplished.

(b) For airplanes on which the ''terminating modification'' [between FSS 640 and FSS 670] specified in Boeing Alert Service Bulletin 747–57A2259, dated February 15, 1990; or Revision 1, dated September 6, 1990; has not been accomplished: Prior to the accumulation of 4,000 total landings on the airplane, or within 6 months after the effective date of this AD, whichever occurs later, perform the inspections specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD to detect cracks in the web between FSS 628 and FSS 675, in accordance with Boeing Alert Service Bulletin 747–57A2259, Revision 2, dated June 9, 1994. Accomplishment of these inspections terminates the repetitive inspection requirement of paragraph (a) of this AD. If no crack is found, repeat these inspections thereafter at intervals not to exceed 1,000 landings.

(1) Perform an ultrasonic inspection in the web under the upper and lower chord footprints; and

(2) Perform a high frequency eddy current inspection in the web in an area one inch below the upper chord and one inch above the lower chord footprints; and

(3) Perform a detailed visual inspection in the forward face of the web of the wing front spar at fastener locations in the web-to-stiffeners and web-to-rib posts.

(c) For airplanes on which the ''terminating modification'' specified in Boeing Alert Service Bulletin 747–57A2259, dated February 15, 1990; or Revision 1, dated September 6, 1990; has been accomplished: Prior to the accumulation of 4,000 total landings on the airplane, or within 6 months after the effective date of this AD, whichever occurs later, perform the inspections specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD to detect cracks in the web between FSS 628 and FSS 636, in accordance with Boeing Alert Service Bulletin 747–57A2259, Revision 2, dated June 9, 1994. If no crack is found, repeat these inspections thereafter at intervals not to exceed 1,000 landings.

(1) Perform an ultrasonic inspection of the web under the upper and lower chord footprints; and

(2) Perform a high frequency eddy current inspection of the web in an area one inch below the upper chord and one inch above the lower chord footprints; and

(3) Perform a detailed visual inspection of the forward face of the web of the wing front spar at fastener locations in the web-to-stiffeners and web-to-rib posts.

(d) If any crack is found during any inspection required by this AD, prior to further flight, accomplish a terminating modification (between FSS 623 and FSS 670) in accordance with Boeing Alert Service Bulletin 747–57A2259, Revision 2, dated June 9, 1994; or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(e) Modification of the wing front spar web between FSS 623 and FSS 670 in accordance with Boeing Alert Service Bulletin 747–57A2259, Revision 2, dated June 9, 1994; or in accordance with a method approved by the Manager, Seattle ACO; or in accordance with AD 95–10–16, amendment 39–9233; constitutes terminating action for the requirements of this AD.

(f) 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 ACO, FAA, Transport Airplane 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) 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.

(h) The inspections and modification shall be done in accordance with Boeing Alert Service Bulletin 747–57A2259, dated February 15, 1990; or Boeing Alert Service Bulletin 747–57A2259, Revision 1, dated September 6, 1990; or Boeing Alert Service Bulletin Revision 2, dated June 9, 1994; as applicable. 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 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.

(i) 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. 95–14631 Filed 6–29–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM94–14–000; and Order No. 580]

Nuclear Plant Decommissioning Trust Fund Guidelines; Final Rule

Issued June 16, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is adopting rules setting forth the guidelines for the formation, organization and purpose of nuclear plant decommissioning trust funds (Fund) and for Fund investments. The rules will give Funds greater investment flexibility. The rules are intended to improve the returns earned on funds contributed through wholesale electric rates and thus decrease the amount collected from ratepayers for decommissioning.

EFFECTIVE DATE: This order is effective July 31, 1995. The incorporation by reference of a publication listed in the regulations is approved by the Director of the Federal Register as of July 31, 1995.

FOR FURTHER INFORMATION CONTACT:
Joseph C. Lynch (Legal Information), Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol St., N.E., Washington, D.C. 20426, Telephone: (202) 208–2128
James K. Guest (Accounting Information), Office of Chief Accountant, 825 North Capitol Street, N.E., Washington, D.C. 20426, Telephone: (202) 219–2602

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3401, at 941 North Capitol Street, N.E., Washington, D.C. 20426.

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Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

I. Introduction

On June 1, 1994, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) in which the Commission proposed to amend 18 CFR Part 35 by adding a new Subpart E, setting forth guidelines for the formation, organization and purpose of Funds by public utilities and for the investment of Fund assets.

The Commission proposed to adopt: (a) *General* guidelines for the formation, organization and operation of Funds; and (b) *specific* guidelines governing the quality and quantity of investments that Funds may make. The Commission requested comments on: (a) The proposed general and specific guidelines; (b) the meaning of the reasonable person standard under the general guidelines and under Alternatives 2 and 3 of the specific guidelines; and (c) on two additional issues: (1) The treatment of monies collected in rates for decommissioning before the effective date of the final rule in this proceeding; and (2) whether, and, if so, under what circumstances, the Commission should allow Funds to follow State trust fund standards for that portion of contributions and earnings that are related to Commission-jurisdictional service.[1]

A. General Guidelines Governing the Organization and Operation of Funds

The proposed general guidelines provide that the Fund must be an external trust fund and that the Trustee must be independent of the utility, have a net worth of at least $100 million, and exercise the care that a reasonable person would use in the same circumstances.

Under the NOPR, the Trustee would: (a) Keep accurate and detailed records; (b) open the Fund to inspection and audit; (c) limit Fund investments to those that the Commission allows; and (d) not invest in any securities of the utility that owns the plant, or in the utility's affiliates, associates, successors or assigns.

The Trustee would also use the Fund only to decommission the nuclear power plant to which the Fund relates, and to pay any administrative or other expenses of the Fund. If Fund balances exceed the amount necessary for plant decommissioning, the utility would refund the excess to its customers in a manner that the Commission will determine. The utility would deposit in the Fund at least quarterly all monies that it collects in Commission-jurisdictional rates to fund decommissioning. The proposed general guidelines also provided that establishing a Fund does not relieve a utility of any obligation that it may have to decommission a nuclear power plant.

B. Specific Guidelines Governing the Investment of Fund Monies

The Commission proposed for consideration three alternative approaches to Fund investment:

Alternative No. 1.: No change in present guidelines, *i.e.*, continuation of ''Black Lung'' restrictions;

Alternative No. 2.: A reasonable person standard with no restrictions; and

Alternative No. 3.: A reasonable person standard with certain restrictions on the quality and quantity of Fund investments.

The Commission requested comments on the appropriate alternative. With respect to the general guidelines and with respect to Alternatives 2 and 3 of the specific guidelines, the Commission requested comments on the precise definition and content of the reasonable person standard.

Thirty-three entities (Commenters) submitted comments.[2] The Commission is now adopting a final rule promulgating regulations governing the formation, organization and operation of Funds and permissible Fund investments applicable to amounts collected from Commission-jurisdictional customers for nuclear decommissioning.[3]

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[1] Nuclear Plant Decommissioning Trust Fund Guidelines; Notice of Proposed Rulemaking, 59 FR 28297 (June 1, 1994), IV FERC Stats. & Regs., Proposed Regulations ¶ 32,506 (1994).

[2] The Commenters are: Boatmen's Trust Company of Illinois and Boatmen's Trust Company (Boatmen's); Sanford C. Bernstein & Co. (Bernstein); Carolina Power & Light Company (Carolina Power & Light); Connecticut Department of Public Utility Control (Connecticut Commission); Consolidated Edison Company of New York (Consolidated Edison); Consumers Power Company (Consumers Power); Cooperatives (consisting of Old Dominion Electric Cooperative, North Carolina Electric Membership Cooperative, Oglethorpe Power Corporation and the National Rural Electric Cooperative Association); Duke Power Company (Duke); Edison Electric Institute (Edison Electric); Entergy Services, Inc. (Entergy - commenting on behalf of: Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, and System Energy Resources, Inc.); Florida Power & Light Company, Texas Utilities Electric Company, and The Washington Public Power Supply System (Companies); Florida Public Service Commission (Florida Commission); Indiana Michigan Power Company (Indiana Michigan); Investment/Trust/Utility Companies; Louisiana Public Service Commission (Louisiana Commission); Maine Yankee Atomic Power Company (Maine Yankee); Mellon Bank (Mellon); Michigan Public Service Commission (Michigan Commission); National Association of Regulatory Utility Commissioners (NARUC); New England Power Company (New England Power); New Hampshire Nuclear Decommissioning Finance Committee (New Hampshire Committee); New York State Department of Public Service (New York State); NISA Investment Advisors, L. L. C. (NISA); Northeast Utilities Service Company (Northeast Utilities); Nuclear Energy Institute (Nuclear Energy); Nuveen-Duff & Phelps Investment Advisors (Nuveen); Pennsylvania Public Utility Commission (Pennsylvania Commission); South Carolina Electric & Gas Company (South Carolina E&G); Union Electric Company (Union Electric); Virginia Electric and Power Company (Virginia Power); Wisconsin Electric Power Company (Wisconsin Electric); and Wisconsin Power and Light Company (Wisconsin Power and Light).

Because the Investment Advisory and Trust Companies' and the Utility Companies' comments are virtually identical, we are treating their comments, although filed separately, as joint comments. Citations to these filings will track the page numbers in the Investment Advisory and Trust Companies' filing. Appendices A and B list the Investment Advisory and Trust Companies and the Utilities Companies respectively.

Note: These Appendices will not appear in the Code of Federal Regulations.

Although Companies filed their Comments one day past the filing deadline, we find good cause to accept them.

[3] The Funds' funding status as of December 31, 1993 appears in Appendix C. Please Note: This

II. Public Reporting Burden

The final rule codifies and clarifies the Commission's requirements regarding the organization and operation of Funds and the investment of Fund assets. The Commission estimates that the public reporting requirements for the information collection requirements contained in this rule average 4 hours per response. Public utilities will submit the information to the Commission on an annual basis. The Commission estimates that the number of respondents is 72. The burden estimate includes the time required to implement the standards, search existing data sources, gather and maintain the data needed, and complete and review the information. The annual burden associated with this information requirement is 288 hours. Interested parties may file comments regarding these burden estimates or any other aspect of this information collection requirement, including suggestions for reducing this burden, with the Federal Energy Regulatory Commission, 941 North Capitol Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415, FAX (202) 208–2425], and send them to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission—(202) 395–3087; FAX: (202) 395–5167).

III. Background

The Commission set forth the background of the development of its current guidelines for Fund investments in the NOPR. We will repeat that discussion here only to the extent necessary to provide a context for our summary and discussion of the comments received in response to the NOPR.

In *System Energy Resources, Inc. (System Energy I)*[4] the Commission set forth the guidelines for public utilities to use in developing Funds and for investing Fund assets. The Commission based those guidelines, *inter alia*, upon the then applicable Internal Revenue Service (IRS) standards, which imposed on Fund investments the same investment restrictions that the Internal Revenue Code (IRC) imposed on Black Lung Disability Trusts.[5] Subsequently, section 1917 of the Energy Policy Act of 1992,[6] among other things, repealed the portion of 468A(e)(4) of the IRC that restricted the types of assets in which a Fund could invest and still qualify for tax benefits. On December 30, 1992, the IRS amended its regulations to reflect the statutory change.

In response to section 1917 of the Energy Policy Act and the IRS's revised regulations, the Commission, in *System Energy Resources, Inc. (System Energy II)*,[7] issued an order clarifying its policy regarding permissible Fund investments. In that order, the Commission continued to restrict Fund investments to those assets permissible for Black Lung Disability Trusts (Black Lung assets). The Commission's order provided that:

> Except to the extent that a public utility can demonstrate in advance that a proposal [to deviate from the guidelines] offers equal or greater assurance of the availability of funds at the time of decommissioning and is at least as beneficial to consumers as the guidelines specified below, public utilities shall limit the investments in Nuclear Decommissioning Reserve Funds to: (1) public debt securities of the United States; (2) obligations of a state or local government which are not in default as to principal or interest; and (3) time or demand deposits in a bank, as defined in 26 U.S.C. § 581 or an insured credit union, within the meaning of 12 U.S.C. § 1752(7), located in the United States. [8]

A number of parties intervened in *System Energy II*, seeking rehearing of the Commission's decision to continue to require Funds to invest in Black Lung assets; in the alternative, the parties sought a rulemaking proceeding to decide Fund investment standards. In *System Energy III*,[9] the Commission denied rehearing of *System Energy II* and commenced this rulemaking to adopt rules for the formation, organization and operation of Funds and to explore whether the Commission should retain its existing rules or adopt alternative rules governing Fund investments.[10]

IV. Jurisdiction

A. Background

In the NOPR, the Commission stated that it would treat the requests for rehearing of *System Energy II* (Requests for Rehearing) as comments in this proceeding.[11] Several Requests for Rehearing challenged the Commission's jurisdiction over Fund investments, and some of the Commenters reference their Requests for Rehearing in their comments.[12] Companies devoted its comments to the jurisdictional issue; it argues that the Commission has no jurisdiction to dictate the type of investments that a Fund may make.[13]

B. The Energy Policy Act

The Commission adopted the Black Lung restrictions for Fund investments in *System Energy I*.[14] In that order the Commission required ''that a utility adopt the [Black Lung] requirements in [§ 1.468A–5T of the IRS temporary regulations] or any subsequent regulations pursuant to section 468(A) of the IRC in designing its decommissioning fund.''[15]

Once section 1917 of the Energy Policy Act repealed the Black Lung restrictions in the IRC on Fund investments, the IRS regulations had no further legal effect for internal revenue purposes and, on December 20, 1992, the IRS modified its regulations to indicate that the Black Lung restrictions no longer applied.[16] Edison Electric states that the Commission ''explicitly incorporated''[17] the IRS regulations into its decision. From this premise, Edison Electric argues that:

> [R]estrictions of nuclear decommissioning reserve fund investment vehicles ceased when the Internal Revenue Code no longer applied such restrictions.[18]

Edison Electric is mistaken in arguing that Black Lung restrictions on Fund investments terminated when Congress repealed the portion of section 468A(e)(4) of the IRC that restricted the types of assets in which a Fund could invest and still qualify for tax benefits. In *System Energy I* the Commission did not adopt the IRS regulations implementing section 468A of the IRC;

Appendix will not appear in the Code of Federal Regulations.

[4] 37 FERC ¶ 61,261 (1986).

[5] 37 FERC at 61,726–728. Former IRC section 468A(e)(4) imposed investment restrictions on Fund investments by cross-referencing IRC section 501(c)(21), which allowed a deduction for a contribution only to those Black Lung Disability Trusts that met certain investment restrictions.

[6] Pub. L. No. 102–486, 106 Stat. 2776, 3024–25 (1992); *see* 26 U.S.C. §§ 468A(e) (1988) (Energy Policy Act).

[7] 65 FERC ¶ 61,083 (1993).

[8] 65 FERC at 61,514. Duke/TU filed a Request for Rehearing but did not file comments. While the Commission accepts the Requests for Rehearing as comments in this proceeding, the citations in this section, for the sake of clarity, distinguish between the earlier-filed Requests for Rehearing and the later-filed Comments.

[9] 67 FERC ¶ 61,228 (1994).

[10] The Commission accepted the pleadings filed in *System Energy III* as timely-filed comments in this rulemaking proceeding. *See* 59 FR 28299 n. 10, IV FERC Stats. & Regs., Proposed Regulations, at 32,851 n. 10. *See also* 67 FERC at 61,696.

[11] 59 FR at 28299 n. 10, IV FERC Stats & Regs., Proposed Regulations at 32,851 n.10.

[12] *E.g.*, Cooperatives Comments at 2–3; Duke Comments at 2; Edison Electric Comments at 26; Investment/Trust/Utility Companies Comments at 2 n.1.

[13] Companies Comments at, *e.g.*, 2, 14.

[14] 37 FERC ¶ 61,261 (1986).

[15] 37 FERC at 61,726.

[16] Nuclear Decommissioning Fund Qualification Requirements, 57 FR 62198 (December 30, 1992).

[17] Edison Electric Request for Rehearing at 3 n.1.

[18] *Id.*

it merely set forth those regulations as a concise statement of the Black Lung requirements that the *Commission* (not the IRS) was imposing on Fund investments.

The Commission's Fund investment guidelines could not depend upon and be co-terminus with IRC provisions or with IRS regulations, because the Commission draws its authority not from the IRC but from the Federal Power Act (FPA). The Commission's Black Lung guidelines for Fund investments remained in force regardless of Congress's amendment of section 468A of the IRC, because the Commission imposed those guidelines on public utilities through its authority under sections 205 and 206 of the FPA, which Congress did *not* amend in the Energy Policy Act.

In both *System Energy II* and *System Energy III*, the Commission confirmed the independence of its Black Lung guidelines from IRC section 468A. In *System Energy II* the Commission stated:

> [W]e find that the former IRS regulations, limiting the type of investments in which a Nuclear Decommissioning Reserve Fund may invest, *continue* to be appropriate for decommissioning funds subject to our jurisdiction. We continue to believe that the security of a decommissioning fund is of primary importance. Thus, the Commission *reaffirms* the application of the * * * [Black Lung] guidelines to such funds * * *[19]

In *System Energy III* the Commission denied intervenors' requests that it vacate its order in *System Energy II*, stating:

> Were we to vacate that order, there would be no guidelines governing Fund investments. Ensuring that there will be sufficient funds for the decommissioning of nuclear plants is too important to allow Funds to invest without guidelines. * * * [T]he guidelines that currently govern Fund investments, which are contained in *System Energy II, will remain in effect* until completion of the * * * [Final Rule]. [20]

In all of its *System Energy* cases, the Commission was plainly exercising its authority under the FPA. That authority remains unchanged by any modification of IRC section 468A.

Duke maintains that, when removing Black Lung investment restrictions on Fund investments from the IRC, Congress intended to give Funds more leeway for their investments.[21] Edison Electric submits that the Energy Policy Act lowered the cost of decommissioning by lowering the tax rate on Funds and by allowing Funds to invest in common stocks and corporate debt, which have higher returns than Black Lung assets. According to Edison Electric, ''[t]hese two actions need to work in tandem to be highly effective in reducing [decommissioning] costs.''[22] Cooperatives insist that the Commission may not re-impose upon Fund investments the Black Lung guidelines that Congress has repealed.[23]

We disagree with Cooperatives, Duke and Edison Electric that in the Energy Policy Act ''Congress made a specific determination to ease prior investment restrictions[,]''[24] and that the Commission no longer has the option of imposing Black Lung restrictions on Fund investments. In the Energy Policy Act Congress made no decision on the investment guidelines that Funds should follow; instead, Congress, as shown below, intended that Fund investment guidelines would be determined by public utility regulatory Commissions. Both the preamble to the IRS Final Rule modifying the IRS regulations to implement section 1917 of the Energy Policy Act (which modified IRC section 468A) and the statement of the House Ways and Means Committee Report on section 1917 of the Energy Policy Act support this view.

In the preamble to the Final Rule, the IRS stated:

> The Treasury Department and the Internal Revenue Service believe that Congress intended the changes made by section 1917 to shift oversight of the types of investments made by nuclear decommissioning funds to the public utility commissions. [25]

When commenting on the purpose of section 1917 of the Energy Policy Act, the House Ways and Means Committee stated:

> The Committee believes that a nuclear decommissioning fund should be allowed to invest in any asset that is considered appropriate by the applicable public utility commission or other State regulatory body. [26]

As the statement of the House Ways and Means Committee indicates, Congress took no position in the Energy Policy Act on proper Fund investment policy. Rather, Congress referred resolution of that issue to the expertise of the public regulatory commissions. Funds can only invest in those assets that this Commission and the State Commissions (for that portion of Fund investments that is State-jurisdictional) ''consider[] appropriate.''[27]

C. The Federal Power Act

According to Duke/TU, ''[t]here is no provision * * * [in] the * * * [FPA] or [in] any other Act giving this Commission * * * specific authority over decommissioning trust fund dollars.''[28] While we agree with Duke that there is no specific authority in the FPA giving the Commission specific authority over decommissioning trust fund dollars, we disagree that the Commission is without authority to set Fund requirements including investment requirements. We note that the FPA does not, for example, give the Commission specific authority to set requirements for the collection of dollars for construction work in progress (CWIP). Yet our CWIP regulations have been affirmed.[29] We also note that our tax normalization regulations have been affirmed,[30] as have our requirements for post retirement benefits other than pensions(PBOPs).[31] Each of the requirements concern, as with Funds, the timing of the recovery of costs of jurisdictional service from ratepayers. Very simply, under sections 205 and 206 of the FPA,[32] the Commission has sole jurisdiction to determine whether, how, and to what extent a public utility will obtain decommissioning funds through wholesale rates, just as it has authority to regulate the inclusion of all other costs of wholesale service.

The Commission does not have to allow public utilities to collect decommissioning funds in advance of their decommissioning expenditures.[33] The Commission, as with its treatment of PBOPs, *supra* n.31, has allowed public utilities with nuclear units to collect decommissioning funds in advance of decommissioning expenditures because this method better matches the recovery of the costs of decommissioning with the ratepayers who used the nuclear facility's output. However, inclusion in rates of amounts to cover future decommissioning

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[19] 65 FERC at 61,513–514 (emphasis supplied).

[20] 67 FERC at 61,696 (emphasis added).

[21] Duke Request for Rehearing at 3.

[22] Edison Electric Request for Rehearing at 6.

[23] Cooperatives states that ''[t]he Commission's peremptory reimposition of the very investment restrictions which were found by Congress to be unnecessarily inflexible flouts the legislature's considered and deliberate repeal of those restrictions.'' Cooperatives Request for Rehearing at 9. *See also* Investment/Trust/Utility Companies Request for Rehearing at 13.

[24] Duke Request for Rehearing at 3.

[25] 57 FR 62198 (December 30, 1992).

[26] H.R. Rep. No. 474, 102d Cong., 2d Sess., pt. 6, at 47.

[27] *Id.*

[28] Duke/TU Request for Rehearing at 6. *See also* Companies Comments at 4–5, 14.

[29] Mid-Tex Electric Cooperative, Inc. et al. v. FERC, 864 F. 2d 156 (D.C. Cir. 1988).

[30] Public Systems v. FERC, 709 F.2d 73 (D.C. Cir. 1983) (*Public Systems*).

[31] Town of Norwood v. FERC, _____ F. 3d _____ No. 93–1785 (D.C. Cir. May 12, 1995) (*Town of Norwood*).

[32] 16 U.S.C. §§ 824d, 824e.

[33] *See Public Systems* and *Town of Norwood, supra.*

expenditures would not be just and reasonable without additional protection to ensure that the amounts will be used for their intended purpose.[34] In addition, by allowing for collections from customers prior to cash expenditure needs, utilities can certify to the NRC that, upon termination of operations, funds will be available for decommissioning.[35]

By allowing public utilities with nuclear units to collect decommissioning funds in advance of decommissioning expenditures, the Commission has allowed the utilities to become fiduciaries for their ratepayers. The Commission did not have to allow this fiduciary relationship to form. But, having allowed the relationship to develop, the Commission undoubtedly has the authority to impose appropriate conditions upon the fiduciaries' use of ratepayers' funds to ensure that Fund monies will be available for their intended purpose, *i.e.*, to cover the costs of decommissioning.

The bulk of decommissioning expenditures may not take place until many years in the future.[36] If the Commission did not have authority to regulate Fund organization, operation and investments, there would be no one to ensure the security of the many millions of dollars that, by the time decommissioning takes place, the utilities will have collected from their wholesale ratepayers and invested as fiduciaries for their ratepayers.

Companies cite *Board of Public Utility Commissioners v. New York Telephone Company*[37] to the effect that:

> Customers pay for service, not for the property used to render it. * * * Property paid for out of monies received for service belongs to the company, just as does that purchased out of proceeds of its bonds and stock. [38]

From this premise, Companies argue that, while the Commission has authority to set just and reasonable rates, it has no jurisdiction over the monies collected for service provided.[39]

Companies are mistaken. Although it is true that the monies that a company collects for the services it renders belongs to the company, that is not the situation that the Final Rule addresses. We are here setting requirements not for monies collected for services rendered, but for monies that the Company is investing on behalf of its ratepayers to meet a future cash expenditure obligation, *i.e.*, decommissioning. In this instance, until the company meets its decommissioning liability, it is holding the monies that it collects for this purpose in trust for its ratepayers. *New York Telephone* is, therefore, inapposite. Under its authority to establish just and reasonable rates, the Commission has jurisdiction to ensure that public utilities prudently invest the monies that they are holding in trust for their ratepayers, so that the amounts that the public utilities collect will be available when the decommissioning obligation comes due.

D. Nuclear Regulatory Commission (NRC) Regulation of Nuclear Facilities

Duke argues that by adopting Black Lung guidelines for Fund investments the Commission has exceeded its authority. Duke maintains that ''the * * * [NRC], not the Commission, is the agency charged with assuring that adequate funds are available for decommissioning.''[40] Although Duke concedes that ''[t]he Commission has the authority to * * * determine whether recovery of a utility's investment funds will be allowed in wholesale rates[,]''[41] Duke maintains that, by imposing Black Lung requirements on Fund investments, ''the Commission has attempted to establish a rule or policy in an area in which the NRC has responsibility and primary concern.''[42]

We do not agree with Duke that, in setting parameters for Fund investments, we are invading an area in which the NRC has primary jurisdiction.

The Commission's jurisdiction over the utilities' collection of monies for Fund investments does not conflict with the NRC's responsibility, which is, *inter alia*, to protect the radiological health and safety of the public. Although the NRC requires public utilities with nuclear assets to provide reasonable assurances that the necessary funds will be available for decommissioning, the NRC's rules do not address the issue of how public utilities will obtain those funds through rates. For example, the NRC's calculations of the minimum amounts necessary to decommission a facility do not address such issues as intergenerational equity, rate of and procedures for fund collections, taxation effects, regulatory accounting, responsiveness of collection schedules to changing conditions, site restoration, or the additional cost, beyond that necessary to terminate the license, and of demolishing equipment and structures that are not radioactive.[43] These are all concerns intimately associated with decommissioning; and they are all exclusively the province of this Commission and state regulatory commissions. Accordingly, this Commission has ample authority to set reasonable parameters for the collection of decommissioning funds in wholesale rates.

The NRC explicitly recognizes the Commission's authority over the collection of decommissioning funds through wholesale rates. The NRC regulations governing reporting and recordkeeping for decommissioning planning acknowledge that:

> Funding for decommissioning of electric utilities is also subject to the regulation of agencies (*e.g.*, Federal Energy Regulatory Commission * * * and State Public Utility Commissions) having jurisdiction over rate regulation. The requirements of this section * * * are in addition to, and not in substitution for, other requirements * * * [44]

The issue in this proceeding, then, is not whether the Commission *can* continue to impose Black Lung restrictions on Fund investments, the issue is whether it *should* continue to do so.

E. Managerial Discretion

Duke/TU submits that, since there are now alternative investment opportunities that do not result in the loss of the current deductibility of Fund collections, it is primarily management's responsibility to assure the availability of funds while minimizing the burden on current customers by achieving maximum return.[45] Duke/TU argues that the Commission has no authority to promulgate guidelines for Fund investment, but must defer to management decisions, which, absent substantial evidence to the contrary, the Commission must presume to be prudent.[46]

We disagree. *Citing West Ohio Gas Company v. Public Utilities Commission*

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[34] Most utilities likely will not make decommissioning expenditures for 20 years or longer.

[35] *See* 10 CFR 50.75(b).

[36] *See, e.g.*, Edison Electric Comments at 11 (use of SAFSTOR method of decommissioning could extend the need for a majority of funds about 50 years or so); Nuclear Energy Institute Comments at 2 (in the case of the SAFSTOR option the amount of time before decommissioning would actually commence could be as much as 50 years after the plant has been retired); Consumers Power Comments at 5 (''Because of the lack of storage capacity for spent nuclear fuel, complete decommissioning * * * may not occur as of the license expiration date.'').

[37] 271 U.S. 23 (1926) (*New York Telephone*).

[38] 271 U.S. at 32.

[39] Companies Comments at 4–5, 14.

[40] Duke Request for Rehearing at 4. *See also* Companies Comments at 10–14.

[41] *Id.* at 4–5.

[42] *Id. at 5.*

[43] *See* 10 CFR 50.75, n.1.

[44] 10 CFR 50.75(a).

[45] Duke/TU Request for Rehearing at 10–11.

[46] Duke/TU Request for Rehearing at 11.

of Ohio[47] and *New England Power Company*,[48] Duke/TU refers to:

> [T]he longstanding practice and tradition which holds that management decisions are presumed to be prudent until substantial evidence is presented indicating imprudence. [49]

What Duke/TU fails to recognize is that the development and management of Funds differs from ordinary day-to-day management decisions. Decommissioning is a cost,[50] which public utilities must fully fund by accumulating funds through wholesale rates over a long period of time. The NRC and the Commission work in tandem in this area. Although it is the NRC that properly insists on the assurance that there will be sufficient monies to cover decommissioning liabilities, it is the Commission that determines how public utilities will accumulate those monies through wholesale rates. Because decommissioning vitally affects the public health and safety, ''the security of a decommissioning fund is of primary importance.'' [51] The Commission does not intend to relinquish its regulatory oversight in this area through over-broad deference to management.

Duke/TU refers to:

> [T]he longstanding regulatory principle that utility commissions are not authorized to make investment decisions and must defer to management in this area. [52]

However, the case to which Duke/TU refers, *New England Power*, has to do not with the investment of ratepayer funds to achieve the twin criteria of safety and maximum return on such funds, but rather with whether a public utility can recover the cost of an abandoned plant. *New England Power* had nothing to do with the investment of capital to fund decommissioning liability.

Moreover, *New England Power* does not say, as Duke/TU suggests, that utility commissions must give utility managers unfettered discretion to invest funds provided by ratepayers in advance of the utility's spending dollars.[53] What *New England Power* says is that:

> [M]anagers of a utility have broad discretion in conducting their business affairs and in incurring costs necessary to provide services to their customers. In performing our duty to determine the prudence of specific costs, the appropriate test to be used is whether they are costs which a reasonable utility management * * * would have made, in good faith, under the same circumstances, and at the relevant point in time. [54]

New England Power does not refer to investments of ratepayer advanced funds, but to the recovery of specific costs necessary to provide service to customers. Even in this restricted area, management's discretion is broad; it is not unlimited.[55]

For public utilities subject to our jurisdiction, we use the prudence test to determine whether a utility may recover its expenses in providing jurisdictional service.[56] Fund investment guidelines govern how a Fund may invest monies obtained from ratepayers in advance of the need to pay for decommissioning work. The two are very different. The prudence test is retrospective; the utility has expended funds or committed to expend funds that it may recover from ratepayers if it has acted prudently. Fund investment guidelines are prospective; the utility is acting as a fiduciary to ratepayers from whom it has obtained funds to pay for decommissioning activity that will occur in the future. The Commission does not have to allow present collections to meet future expenditures. But, if it does, then it is well within the Commission's province to insist on appropriate guidelines for a public utility's management of monies that it is holding in trust for its ratepayers.

V. Treatment of Funds (and Earnings on Those Funds) Collected Prior to Effective Date of a Final Rule in This Proceeding

Several Commenters ask that the Commission either make the Final Rule prospective only or allow for a sufficient transition period so that utilities may conform Fund investments to the Final Rule without forced-liquidation losses.[57] For example, Carolina Power & Light states that any immediate liquidation of securities to comply with new investment guidelines will most likely result in a significant premature tax payment. It recommends that, to minimize the payments of taxes and to maximize the after-tax return of the Fund, the final rule should only apply to fund collections taking place after the effective date of the final rule.[58] According to Virginia Power, it was not apparent that the Commission's investment guidelines set forth in *System Energy I* were applicable to non-qualified trusts, given the Commission's reliance on the language in the Internal Revenue Code, section 468A. Virginia Power suggests that, because of what it sees as an ambiguity in the Commission's language, certain utilities may have invested non-qualified trust funds in other than Black Lung assets (*e.g., equities).*[59]

Virginia Power speculates that utilities may also have begun investing qualified trust funds in assets other than Black Lung assets when Congress passed the Energy Policy Act.[60]

Commission Ruling

We do not agree that our order in *System Energy I* was at all unclear. Nor do we agree that the Energy Policy Act changed the *System Energy I* investment requirements and thereby gave public utilities a license to invest in other than Black Lung instruments.[61] However, our adoption of the reasonable investor standard for Fund Investments moots this issue since the standard applies to all fund assets.

VI. Whether, and, if so, and Under What Circumstances the Commission Should Allow State Trust Fund Standards to Govern the Portion of Fund Contributions and Fund Earnings That Are Related to Commission Jurisdictional Service

Several Commenters recommend that, when a State having jurisdiction over a utility's retail rates has Fund investment guidelines and the Commission-jurisdictional portion of a Fund is relatively small (25 percent or less) in comparison to the State-regulated portion, the Commission should either adopt or defer to the State's Fund investment guidelines.[62] These

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[47] 294 U.S. 63 at 72 (1935).

[48] 31 FERC ¶ 61,047 (1985), *aff'd, sub nom.*, Violet v. FERC, 800 F.2d 280 (1st Cir. 1986)(*New England Power*).

[49] Duke/TU Request for Rehearing at 11.

[50] Under the Commission's existing Uniform System of Accounts requirements, decommissioning is an estimated removal cost for plant facilities, which is recovered as a component of net salvage in determining depreciation expense. Removal costs are recognized on an accrual basis on the balance sheet over the life of the asset. The Financial Accounting Standards Board has recently undertaken a project which, among other things, examines whether a liability should be recognized for the entire cost of decommissioning at approximately the time the asset is placed in service.

[51] 65 FERC at 61,513.

[52] Duke/TU Request for Rehearing at 11.

[53] Duke/TU Request for Rehearing at 11.

[54] 31 FERC at 61,084, as quoted at 800 F.2d 282–83 (emphasis supplied and deleted).

[55] *Id.*

[56] 800 F.2d at 282.

[57] Carolina Power & Light Comments at 13; Edison Electric Comments at 2, 26 and n.21 (Commission should allow time for prudent transition to new guidelines); Investment/Trust/ Utility Companies Comments at 16; Maine Yankee Comments at 5–6; South Carolina E&G Comments at 2; Pennsylvania Commission Comments at 18–19; Virginia Power Comments at 3; Wisconsin Electric Comments at 3.

[58] Carolina Power & Light Comments at 13.

[59] Virginia Power Comments at 3.

[60] Id. at 3.

[61] *See* discussion under *Jurisdiction, supra.*

[62] *E.g.*, Edison Electric Comments at 3; Entergy Comments at 5; Indiana Michigan Comments at 9; Investment/Trust/Utility Companies Comments at

Commenters emphasize the State's interest in ensuring that Fund investments achieve the highest possible returns consistent with prudence and the administrative costs that utilities would avoid by not having to maintain separate Funds for State and Commission-jurisdictional portions of their decommissioning collections. Union Electric recommends that, when more than one State regulates a Fund, the Commission should afford the utility the option of selecting which State standards to apply to the Commission Fund.[63]

On the other hand, New England Power asks the Commission not to adopt State standards for the investment of Commission-jurisdictional Fund contributions. New England Power submits that there should be one set of national standards for the investment of Commission-jurisdictional Fund contributions rather than many different standards, which may support various State policies.[64]

Commission Ruling

We will not adopt State standards for the Commission-jurisdictional portion of decommissioning Funds. We agree with New England Power that there should be but one national, uniform set of regulations for Fund investments concerning wholesale sales of electric energy in interstate commerce by public utilities. If there are special circumstances that dictate the use of State guidelines for a specific Fund, the utility may bring those circumstances to our attention. We will consider allowing the application of State guidelines in specific instances on a case-by-case basis.

VII. General Guidelines

In the NOPR, the Commission proposed general guidelines for the formation, organization and purpose of Funds. Virginia Power suggests that we narrow the focus of the guidelines, lest we inadvertently summarily prohibit other decommissioning alternatives available to nuclear utilities under the NRC's regulations governing reporting and recordkeeping for decommissioning planning.[65] Besides an external sinking fund, the NRC's guidelines allow nuclear utilities to fund decommissioning by prepayment, surety, insurance or ''other guarantee.'' [66]

Many of the other Commenters seek other modifications of the proposed general guidelines. For example, Commenters ask the Commission to clarify what it means by a ''Trustee.'' Commenters state that, under the trust agreement establishing an external Fund, the utility appoints the Trustee to perform certain functions, including recordkeeping, valuation and custodial services. According to Commenters, the utility may also grant the Trustee the responsibility to invest the Fund's assets. Alternatively, the utility may retain the investment responsibilities, or may appoint an outside investment advisor to direct the Trustee in investing the Fund's assets. Commenters suggest that the Commission use the term ''fiduciary'' to designate the party with investment responsibility.[67]

Commenters recommend that the $100,000,000 net worth requirement for a Trustee include the assets of the Trustee's parent corporation and affiliates.[68] Commenters also maintain that a public utility should be able to audit a fund without first notifying the Commission and that the Commission should not be able to direct a utility to perform an audit or inspection, as the Commission has proposed to do in the general guidelines.[69]

With respect to Fund surpluses and shortages, Commenters recommend that the Commission: (a) Give utilities the right to bill current or past customers for Fund shortages; [70] (b) provide for the equitable distribution of excess Fund balances between shareholders and ratepayers in those instances in which a utility has contributed shareholder money to the Fund; [71] (c) provide that the company may receive some portion of any Fund surplus resulting from superior Fund and/or decommissioning-cost management; [72] and (d) allow a company with multiple Funds to retain any excess in a particular Fund until there is no possibility of a decommissioning deficiency in another Fund of the same company.[73]

With respect to Fund management, Commenters suggest that the Commission: (a) Amend its proposed general guidelines to except from the ''exclusion of affiliates provision'' investments in broad market indexes or other mutual funds; [74] (b) revise its rules regarding quarterly deposits to the Funds to allow for annual deposits except when annual contributions would exceed a million dollars; [75] (c) provide that a fiduciary's standard of care under this section is the same standard of care that the Commission adopts under the specific guidelines for Fund investments; [76] (d) state that the Final Rule applies only to Commission-jurisdictional Funds; [77] (e) delete the term ''associates'' from the investment provisions because the meaning is unclear; [78] and (f) state that a fiduciary (other than a utility) does not have any responsibility to ensure that the amount of monies that a Fund contains are adequate to pay for the decommissioning liability.[79]

Edison Electric states that the references to tax maximization and minimization are unclear, and will be unnecessary if the Commission adopts the reasonable person investment standard with no restrictions.[80] Edison Electric suggests, among other things, that the Commission change the term ''liquidity,'' used in the section of the proposed rules regarding after-tax earnings, to state: ''giving due consideration to the timing of the need for the funds.'' [81] According to Edison Electric, this change would define the

14–15; Louisiana Commission Comments at 12–13; NARUC Comments at 6; New Hampshire Committee Revised Comments at 1; Northeast Utilities Comments at 21; Union Electric Comments at 2; Virginia Power Comments at 3; Wisconsin Electric Comments at 3.

[63] Union Electric at 2.

[64] New England Power Comments at 2–3.

[65] Virginia Power Comments at 1–2.

[66] 10 CFR 50.75(e)(1)(i)(iii).

[67] Edison Electric Comments at 7–8, 28–29; Investment/Trust/ Utility Companies Comments at 10–11; Mellon Comments at 1–2.

[68] Boatmen's Comments at 1; Edison Electric Comments at 31; Union Electric Comments at 1–2. Michigan Commission asks the Commission to provide that the Trustee shall have assets of at least five times the total of the decommissioning funds that it manages, but in no event less than $100 million. Michigan Commission Comments at 3.

[69] Indiana Michigan Comments at 11; Virginia Power Comments at 2. Virginia Power states that a provision allowing the Commission to direct a public utility to perform an audit or inspection of the Fund is unnecessary, because the Commission has the ability to conduct its own audits of Fund operations at any time, and will receive annual statements showing all Fund activity. Virginia Power Comments at 2.

[70] Edison Electric Comments at 31; Indiana Michigan Comments at 11–12; Wisconsin Electric Comments at 3.

[71] Edison Electric Comments at 31; Entergy Comments at 2; Indiana Michigan Comments at 11; Investment/Trust/Utility Companies Comments at 13; Wisconsin Electric Comments at 3.

[72] Edison Electric Comments at 31–32.

[73] Indiana Michigan Comments at 12.

[74] Northeast Utilities Comments at 15. Northeast Utilities states that this exception is particularly important in the case of a Fund for jointly-owned units, where a dozen or more different utilities can be owners. *Id.*

[75] Entergy Comments at 2; Nuclear Energy Comments at 3; Investment/Trust/Utility Companies Comments at 14.

[76] Investment/Trust/Utility Companies Comments at 12.

[77] Edison Electric Comments at 30.

[78] Investment/Trust/Utility Companies Comments at 12.

[79] Investment/Trust/Utility Companies Comments at 17.

[80] Edison Electric Comments at 29–30. Edison Electric refers to the ''ERISA prudent person standard,'' but it is clear from the context that Edison Electric is referring to proposed Alternative No. 2.

[81] Edison Electric Comments at 32.

type of liquidity needed. Investment/Trust/Utility Companies suggests language that, it submits, would clarify the Commission's intent regarding obtaining optimum tax treatment for the Fund.[82]

Investment/Trust/Utility Companies asks the Commission to define the term ''costs of decommissioning the nuclear power plant,'' and offers a definition of the term.[83]

Maine Yankee states that, in the case of a public utility having but a single asset, which is a nuclear generating unit, the Commission should consider that *all* costs associated with unwinding the affairs of the company are decommissioning costs.[84]

Investment/Trust/Utility Companies suggests that the Commission does not intend to require that a utility establish a *separate* Fund for Commission-jurisdictional decommissioning collections, but only to set aside a percentage of the assets of a Fund equal to the Commission-jurisdictional portion of the total balance of the Fund. Investment/Trust/Utility Companies asks the Commission to explain that it is this portion of the Fund that the utility must administer and invest according to the Commission's rules.[85]

Investment/Trust/Utility Companies also asks the Commission to state that a utility may establish both qualified and non-qualified funds with respect to a utility's interest in a specific nuclear plant. It explains that a qualified fund is an external trust established under section 468A of the Internal Revenue Code (Code). It states that, because there are limits in Code section 468A on amounts that a utility can contribute to a qualified fund, many utilities also establish one or more external, non-qualified funds to hold additional decommissioning collections from customers.[86] Investment/Trust/Utility Companies recommends that the Commission state whether it intends the Final Rule to apply to both ''qualified'' (under Code section 468A) and non-qualified funds.[87]

The Michigan Commission asks that the Commission amend the proposed general guidelines that refer to specific investment limitations to provide that:

(7) [T]he Trustee shall not invest in any securities of the subsidiaries, affiliates, or associates or their successors or assigns of the utility for which it is managing the Fund, or any utility, which, on the date of the investment, has a nuclear plant on its books. [88]

Commission Rulings

Although Virginia Power suggests that public utilities might fund decommissioning by some mechanism other than a Fund,[89] no other Commenter has proposed that public utilities might fund decommissioning in any manner other than by establishing a Fund. The NRC's regulations governing reporting and recordkeeping for decommissioning planning provide that electric utilities must certify that, upon termination of operations, funds will be available for decommissioning.[90] Electric utilities must supply the NRC with a copy of the financial instruments that support the certification.[91] Electric utilities may give adequate assurance that funds will be available for decommissioning through either: (a) Prepayment; (b) an external sinking fund; or (c) surety, insurance or other guarantee.[92] The NRC's regulations provide that an external sinking fund is: a fund established and maintained by setting funds aside periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit or deposit of government securities. [93]

The Comments indicate that all of the electric utilities that have nuclear units have elected to furnish the requisite financial assurance to the NRC by establishing external sinking funds. No one suggests otherwise and we have no reason to believe that any public utilities are funding the decommissioning expense by any mechanism other than through an external sinking fund.

The general guidelines governing the formation, organization and purpose of external Funds will apply to all public utilities that employ such a device. However, the guidelines will not exclude any options that may be theoretically possible but have not currently been selected by public utilities. We see no reason, then, to restrict the application of the guidelines. Accordingly, we will reject Virginia Power's recommendation that in the Final Rule we more narrowly focus the application of the general guidelines.[94]

If public utilities *are* using or *intend to use* any of the other options that the NRC allows for funding the decommissioning expense, they should promptly bring those alternatives to our attention.

We appreciate the Commenters' observation that, under a trust agreement establishing a Fund, persons other than a Trustee, such as an investment advisor or an investment fund manager, may invest the Fund's assets, either directly or by directing the Trustee's investments. To clarify, we will use the term ''fiduciary'' throughout the remainder of this Final Rule to refer to both the person(s) or institution(s) that perform the trustee and investment management functions, except where otherwise noted.

As the Commenters have made clear, trust fiduciaries have various duties. The primary duty of the Trustee is custodial. The Trustee holds, manages, cares for and protects Fund assets, maintains records of the Fund's investment activities, receives and delivers securities in accordance with the instructions of the investment managers and collects interest and dividends. Another related duty of a Trustee is disbursement of funds. The Trustee makes distributions from the Fund for decommissioning costs, administrative costs and fees in accordance with the trust agreement, and periodically furnishes statements to the utility setting forth the value of the Fund. A third duty of trust fiduciaries is investment management; this duty may be performed by the Trustee or by another fiduciary. We emphasize, however, that the utility may not serve as investment manager. The investment manager must be independent of the utility and its subsidiaries, affiliates, and associates. As explained below, the utility may provide written general investment policy, but it may not engage in day-to-day management of the Fund. The investment manager directs and implements the Funds' investment program, and executes contracts, agreements and other documents necessary to manage and invest the Fund's assets.[95]

The utility, as sponsor of the decommissioning fund, has overall responsibility to direct the investment program, and appoint trustees and investment managers. We would expect utilities to communicate regularly with the fiduciaries they appoint. For

[82] Investment/Trust/Utility Company Comments at 14.

[83] *Id.* at 12–13.

[84] Maine Yankee Comments at 5.

[85] Investment/Trust/Utility Companies Comments at 11.

[86] Id. at 11 and n.4.

[87] Id. at 16.

[88] Michigan Commission Comments at 3.

[89] Virginia Power Comments at 1–2.

[90] 10 CFR 50.75(b) and (e)(1)(ii).

[91] 10 CFR 50.75(b).

[92] 10 CFR 50.75(e).

[93] 10 CFR 50.75(e)(1)(ii).

[94] *See* Virginia Power Comments at 1–2.

[95] Edison Electric Institute Comments at 7–8; Mellon comments at 1–2.

example, a utility would need to supply to the fiduciary, and to regularly update, essential information about the nuclear unit covered by the Trust Fund Agreement, including its description, location, expected remaining useful life, the decommissioning plan that the utility proposes to follow, the utility's liquidity needs once decommissioning begins, and any other information that the fiduciary would need to construct and maintain, over time, a sound investment plan. A prudent utility would also monitor the fiduciary's performance and, if necessary, replace the fiduciary if the fiduciary is not properly performing its assigned responsibilities.

To ensure that the fund assets are not available to creditors in the event of the bankruptcy of the utility, the Trust assets must be segregated from those of the utility and outside the utility's administrative control. There must be a written trust agreement and the fiduciary or fiduciaries, in fullfilling the various duties, must be completely separate and apart from the utility.[96] The utility may provide general investment policies, but it may do so only in writing and it may not engage in the day-to-day management of the Fund or mandate or itself make individual investment decisions. These criteria accord with the NRC's regulations and the NRC Staff guidelines on the subject of ensuring the availability of funds for decommissioning nuclear reactors.[97]

The $100,000,000 net worth requirement for a fiduciary ensures that the fiduciary will have the necessary assets to adequately self-insure its performance. In calculating the $100,000,000 net worth requirement, we will take into account the net worth of the fiduciary's parent corporation and affiliates *only* if those entities agree to act as guarantors for the fiduciary with regard to its Fund responsibilities. If they do not, then their assets are irrelevant to the purpose of the $100,000,000 net worth requirement, since those assets would not be available to insure the fiduciary's performance.

As an integral part of our oversight function, we will retain the requirement that a utility notify the Commission before auditing a Fund and we will retain our authority to direct a utility to audit or inspect the Fund. There is no need to decide Virginia Power's position that the provision allowing the Commission to direct a public utility to perform an audit or inspection of the Fund is unnecessary since we believe it is appropriate in any event to clearly specify this requirement. Even though we will receive annual statements showing all Fund activity, we must ensure that the statements are correct. We can conduct our own audits. But the Fund oversight function imposes an additional burden on the Commission's resources and it may be necessary to direct public utilities to perform the audits or inspections and forward the results of their monitoring to the Commission.

We will not provide blanket authority for utilities to bill current and past customers for Fund shortages. We hope that there will be no Fund shortages and that utilities are collecting all of their wholesale decommissioning costs through the rates that they have on file with this Commission. However, the actual, total cost of decommissioning will not be known for years. Whether Funds' assets are sufficient, insufficient, or just right will not be known until that time. Accordingly, we will consider requests to bill current and past customers for Fund shortages on a case-by-case basis.

We will not allow utilities to pay shareholders out of Fund assets. It is the ratepayers who are paying for decommissioning through their wholesale rates. Commenters have submitted no evidence that shareholders have contributed to meeting decommissioning expenses. Decommissioning expenses are costs of doing business for which public utilities are entitled to reimbursement from their ratepayers.

Edison Electric asks that we allow a company to receive some portion of any Fund surplus resulting from superior Fund and/or decommissioning-cost management.[98] Edison Electric does not explain what it considers to be superior Fund and/or decommissioning-cost management and offers no norm against which to measure such management.[99] What Edison Electric overlooks is that ratepayers should receive the best Fund and decommissioning-cost management available as a matter of course. Companies should not profit from providing the service that they should provide in the normal course of conducting their business.

We will adopt Commenters' suggestion and not allow a company with multiple Funds to retain any excess in a particular Fund until there is no possibility of a decommissioning deficiency in another Fund of the same company.[100] Companies must meet Fund deficiencies on a unit-by-unit basis. Funds are not generic. Each Fund can only be unit-specific, because the fiduciary duty of Fund managers can only be to the ratepayers who have contributed to the cost of decommissioning the specific unit for which it manages the Fund. A particular fiduciary may administer more than one Fund, but it has a separate fiduciary responsibility to each Fund.

Were a utility able to use excesses in one Fund to offset deficiencies in other Funds, one set of ratepayers would be required to subsidize other ratepayers. The remedy for a Fund deficiency is not to take a surplus from another Fund, but to adjust the collections for the Fund that is deficient.

We reject Investment/Trust/Utility Companies' suggestion that a public utility need not establish a separate Fund for Commission-jurisdictional decommissioning collections, but only set aside a percentage of the assets of a Fund equal to the Commission-jurisdictional portion of the total balance of the Fund.[101] Public utilities must establish a separate Fund for Commission-jurisdictional decommissioning collections. Although this will add to a utility's administrative expenses, it is the only way that we can ensure the integrity of Commission-jurisdictional Funds.

We will adopt Commenters' suggestion that we except investments in broad market indexes or other mutual funds from the ''exclusion of affiliates'' provision. Were we not to make this exception, the ''exclusion of affiliates'' provision would unduly restrict investments in market indexes and other mutual funds, and make such investments inordinately difficult to place and to monitor, especially for Funds that pertain to jointly-owned units, when several different utilities are participating owners of the same nuclear unit.[102]

The reason for the requirement that utilities make deposits to the Funds every quarter is to ensure that utilities promptly deposit into the Funds (and thus begin earning a return on) the monies that they collect for decommissioning. The notion that utilities might make Fund deposits annually, except when annual

[96] *Cf.* In Re: Columbia Gas Systems, Inc., *et al.* 997 F.2d 1039 (3rd Cir. 1993).

[97] 10 CFR 50.75(e)(1)(ii); U.S. Nuclear Regulatory Commission, *Regulatory Guide: Assuring the Availability of Funds for Decommissioning Nuclear Reactors* (1990) at 1.159–4.

[98] Edison Electric Comments at 31–32.

[99] As discussed above, utilities will not manage the Funds. That will be the role of the independent fiduciaries.

[100] *See* Indiana Michigan Comments at 12.

[101] *See* Investment/Trust/Utility Companies' Comments at 11.

[102] *See* Northeast Utilities Comments at 15.

contributions would exceed a million dollars,[103] is unacceptable. Such a rule could deprive Funds of earnings on large amounts of ratepayer-contributed monies. The purpose of collecting decommissioning funds through wholesale rates is solely to fund nuclear decommissioning. Public utilities should be using these funds for no other purpose and they should be depositing these monies into the Funds as promptly as possible. If a public utility faces special circumstances, it may apply for a waiver of this rule. We will consider requests for such waivers on a case-by-case basis.

We agree with Commenters that a fiduciary's standard of care under the general guidelines must be the same standard of care that the Commission adopts under the specific guidelines for Fund investments.[104] We will discuss this standard of care in the next section and will incorporate into the fiduciary's standard of care under the general guidelines the same standard of care that we adopt under the specific guidelines for Fund investments.

We will adopt Edison Electric's recommendation [105] and provide that the Final Rule applies only to Commission jurisdictional Funds. The Final Rule will also provide that it is not the responsibility of the Fund's fiduciary investment manager to ensure that the amount of monies that a Fund contains are adequate to pay for decommissioning [106]

We will not delete the term ''associates'' from the Final Rule. The only reason that Commenters advance for omitting this term from the Final Rule is that, in their view, the meaning of this term is unclear.[107] By the term ''associates'' we mean any companies or persons that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the utility.[108]

We agree with Commenters that the references to tax maximization and minimization in the NOPR are unclear.[109] In the Final Rule we will adopt Commenters' suggested language, slightly modified, as follows:

> The utility and Fiduciary shall seek to obtain the best possible tax treatment of amounts collected for nuclear plant decommissioning. In this regard, the utility and Fiduciary shall take maximum advantage of tax deductions and credits, when it is consistent with sound business practices to do so. [110]

This modification obviates the need to redefine the word ''liquidity'' to mean ''giving due consideration to the timing of the need for the funds[]'' as Edison Electric recommends.[111]

Investment/Trust/Utility Companies asks the Commission to define the term ''costs of decommissioning the nuclear power plant,'' and offers the following definition of the term:

> The term ''cost of decommissioning'' means all expenses to be incurred in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a nuclear power plant that has permanently ceased the production of electric energy, including all costs necessary to bring the plant site to ''greenfield'' status and any other type of cost included in a study accepted by the Commission as a basis for determining the amount to be included in rates charged to customers. Such term includes all expenses incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all expenses to be incurred after the actual dismantlement occurs, such as physical security and radiation monitoring expenses. The term also includes costs of spent fuel storage, disposal and removal and low level waste storage, disposal and removal. For a single asset company, the term includes the winding up costs of the company. The term includes costs whether they are treated as capital items or expense items for regulatory, financial, or tax accounting purposes. [112]

Decommissioning nuclear plants and recognition and measurement of the related costs is complex.[113] The Commission has had little experience in examining the actual expenditures required in connection with decommissioning a nuclear power plant. For this reason it would not be appropriate to adopt at this time any definition, either that proposed by Investment/Trust/Utility Companies or otherwise. If we were to do so, we are afraid that costs legitimately part of decommissioning would be excluded because such costs failed to fall within the categories provided by the definition. For the purposes of the Final Rule, we need only define the amounts that are subject to the Final Guidelines that we are adopting. In that regard, the Final Rule provides that all amounts approved by the Commission as decommissioning expenses in public utilities' rates are subject to the Fund requirements of the Final Rule.

However, we do not agree that, in the case of a public utility having but a single asset, which is a nuclear generating unit, *all* costs associated with winding up the affairs of the company are necessary decommissioning costs.[114] In any event, this issue is best addressed on a case-by-case basis.

Several commenters pointed out that public utilities may establish both qualified and non-qualified Funds with respect to a utility's interest in a specific nuclear plant. The Final Rule will apply to both ''qualified'' (under Code section 468A) and non-qualified Funds.[115]

We will partially adopt Michigan Commission's suggestion and provide that fiduciaries shall not invest in any securities of the subsidiaries, affiliates, or associates or their successors or assigns of the utility for which they manage the Fund.[116] The only exception to this restriction will be for investments in mutual funds or in broad market indexes, since such a restriction would virtually preclude such investments.

VIII. Reports

In the NOPR, the Commission proposed that the utility must submit to the Commission by June 30 of each year a copy of the financial report that the fiduciary furnishes to the utility for the most recent 12-month period, showing assets and liabilities and various other information.[117] Indiana Michigan asks the Commission to: (a) change the wording ''the most recent 12-month period'' to ''the prior calendar year;'' and (b) eliminate the word ''liabilities,'' since the Fund should have only assets. Indiana Michigan also asks the Commission to consider allowing the companies to maintain the fiduciary's reports available for inspection by Commission auditors, rather than file the reports with the Commission.[118]

Edison Electric requests that the provision for the filing of reports specify that the reports due by June 30th are or may be for the preceding calendar year rather than for the most recent 12-month period. Edison Electric also suggests that the Commission consider allowing

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[103] *See* Entergy Comments at 2; Nuclear Energy Comments at 3; Investment/Trust/Utility Companies Comments at 14.

[104] *See* Investment/Trust/Utility Companies Comments at 12.

[105] *See* Edison Electric Comments at 30.

[106] *See* Investment/Trust/Utility Companies Comments at 17.

[107] *See* Id. at 12.

[108] *See* 18 CFR Part 101, Definition 5A.

[109] Edison Electric Comments at 29–30.

[110] *See* Investment/Trust/Utility Company Comments at 14.

[111] *See* Edison Electric Comments at 32.

[112] Investment/Trust/Utility Companies' Comments at 12–13.

[113] We note that the Financial Accounting Standards Board presently has under consideration a project to address the accounting for nuclear plant decommissioning.

[114] *See* Maine Yankee Comments at 5.

[115] *See* Investment/Trust/Utility Companies Comments at 11 and n.4, and 16.

[116] *See* Michigan Commission Comments at 3.

[117] 59 FR 28302 (June 1, 1994), IV FERC Stats. & Regs., Proposed Regulations at 32,856–58.

[118] Indiana Michigan Comments at 14.

companies to keep the reports on file and open to Commission inspection, rather than requiring the companies to file the reports with the Commission.[119]

Consolidated Edison suggests that the Commission consider allowing utilities to file the Fund annual report as part of the utility's FERC Form No. 1.[120]

Investment/Trust/Utility Companies asks the Commission to state that the required financial report should include only the assets of the Fund (*e.g.*, obligations held by or on behalf of the Fund) and only the liabilities of the Fund (*e.g.*, accrued but unpaid taxes or fiduciaries' fees), and not the liability for decommissioning, which is a liability of the utility, not of the Fund. Investment/Trust/Utility Companies also asks the Commission to specify that the term ''most recent 12 months'' refers to the most recently-completed annual accounting period that the Fund uses.[121]

Duke maintains that the Commission's proposed reporting requirements are an additional, unnecessary burden. Duke submits that the Commission could obtain the same information during its routine audits of the utilities.[122] The Louisiana Commission recommends a comprehensive set of reporting requirements to promote ''a dialogue between consumer representatives * * * and * * * utilities on investment and fund management practices.'' [123] In addition to financial statements, identification of fiduciaries, the manner of their selection, and a statement of their fees, the Louisiana Commission would require, among other things, a comparison of asset returns with the returns of the Standard & Poor's 500 and a narrative description of the Fund's investment strategy.[124]

Commission Rulings

We will adopt Edison Electric's suggestion to report the prior calendar year performance. This will permit the Commission to monitor how a Fund is performing in relation to other Funds and will permit ready identification over time of Funds that may be significantly under-performing. Allowing Funds to report on different time periods would complicate such analysis.[125] We will require utilities to file the reports by March 31 of each year, with the first report due April 1, 1996 (March 31 of that year being a Sunday). This will afford sufficient time for any changes necessary in current reporting systems.[126]

We will also maintain the requirement that utilities submit the annual Fund reports to the Commission, rather than simply retain them, open for inspection. Having to go to each utility to review the Funds' annual reports would unnecessarily burden the Commission's resources.

We will not make the Funds' annual reports part of FERC Form No. 1. To do so would require development and use of a structured format particularly for purposes of our electronic filing requirements for that form. The submission of a copy of the financial reports provided by the Fund fiduciaries will be administratively less burdensome and will be sufficient for our purposes.

We will not omit from the reporting requirements the word ''liabilities.'' We must know if Funds incur liabilities and the amounts of those liabilities or our oversight would be incomplete.[127]

We disagree with Duke that the reporting requirement is unnecessary. Duke's thesis is that the Commission can obtain the required information during its routine audits of the utilities. However, the Commission does not audit each public utility annually. The information will not always coincide with our scheduled audit activity. Moreover, an annual filing requirement will provide the Commission greater flexibility to monitor Funds. The Commission has a responsibility to routinely monitor the Funds in order to protect ratepayer interests.

We reject Louisiana Commission's proposed reporting requirements as unnecessary. The reporting requirements that we adopt are sufficient for our purposes.[128]

We will adopt the recommendation of Investment/Trust/Utility Companies and provide that the required financial report should include only the assets and liabilities of the Fund and not the liability for decommissioning. Investment/Trust/Utility Companies are correct that the decommissioning expense is a liability of the utility and not of the Fund.

IX. The Alternatives

A. Alternative No. 1: No Change in Present Guidelines, I.E., Continuation of Black Lung Restrictions

No Commenter favors adoption of Alternative No. 1 and most parties oppose its adoption. Commenters recognize the need to ensure that the requisite funds will be available at decommissioning. But Commenters argue, among other things, that Black Lung investments are not necessarily as safe as they seem, and that they disadvantage ratepayers, because they do not keep up with inflation and necessitate higher collections to meet the projected decommissioning liability.[129] Commenters also argue that the Black Lung Guidelines are not required, because prudent investment principles and the standard that applies to fiduciaries for private pension plans under section 404 of the Employee Retirement Income Security Act of 1974 (''ERISA'')(29 U.S.C. § 1104) (the ERISA standard) provide ample, tested, and federally-sanctioned protection to ratepayers.[130] But Edison Electric cautions that, if the Commission selects a guideline that allows for investments in other than Black Lung instruments, the Commission should make it clear that investment in a Black Lung instrument is not proscribed, so long as the investment is prudent under the circumstances.[131] While Indiana Michigan opposes the Commission's limiting Fund investments to Black Lung instruments, it states that the Commission should make it clear that Black Lung instruments may form part of a Fund's portfolio depending on the Fund Manager's evaluation of the risk and rewards of such investment.[132]

New York State maintains that certain criticisms of the Black Lung Guidelines are unfounded. First, in its view, arguments that the Black Lung Guidelines are not a guarantee against loss are inapposite. New York State recognizes that, while Black Lung instruments are conservative investments, they are not guaranteed against loss. But New York State notes that Black Lung investments are very low risk, and, barring a national

[119] Edison Electric Comments at 25.

[120] Consolidated Edison Comments at 5.

[121] Investment/Trust/Utility Companies at 9.

[122] Duke Comments at 5.

[123] Louisiana Commission Comments at 10.

[124] Louisiana Commission Comments, Appendix A at 15–16.

[125] We believe, however, that any comparisons of Fund performances must be based on several years' data.

[126] For this reason we reject Nuclear Energy's suggestion that the utility decide the reporting period based on *its* reporting responsibilities to the Commission, State regulators and the NRC. *See* Nuclear Energy Comments at 3.

[127] For example, each fund will probably have unpaid fiduciaries' fees.

[128] Of course, the Louisiana Commission can impose whatever reporting requirements are lawful under its authorities on Funds for retail customers.

[129] *See* Bernstein Comments at 2; Consolidated Edison Comments at 3; Consumers Power Comments at 3; Cooperatives Comments at 6–7; Duke Comments at 2; Edison Electric Comments at 14–15; Investment/Trust/Utility Companies Comments at 3; Louisiana Commission Comments at 4–6; New York State Comments at 4–5; Northeast Utilities Comments at 6–8; Pennsylvania Commission Comments at 3, 13, and 20; Wisconsin Power Comments at 1–2.

[130] *See* Consumers Power Comments at 4.

[131] Edison Electric Comments at 15.

[132] Indiana Michigan Comments at 2.

catastrophe, would be expected to provide a full return of interest and principal. Second, according to New York State, the criticism that the use of Black Lung investments increases the risk that the returns will be insufficient to meet the decommissioning obligation is unfounded. While agreeing that Black Lung investments provide lower returns than investments associated with higher risk, New York State submits that the predictability of the return on Black Lung investments makes it highly unlikely that returns will be insufficient to meet decommissioning obligations. New York State points out that one can more readily project amounts placed in Funds that invest exclusively in Black Lung instruments. According to New York State, less predictable returns are a greater threat to meeting decommissioning obligations, since there is a greater opportunity for lost investment.[133]

New York State recognizes that Black Lung investments may yield returns lower than inflation, and that poorly managed Black Lung investments may incur a loss, because the investments may need to be sold at a discount to face value if their maturities are not carefully timed and interest rates increase subsequent to their purchase.[134]

New York State concludes that continuing the Black Lung Guidelines is ill-advised. New York State submits that Black Lung investments are contrary to modern investment theory.

B. Alternative No. 2: A Reasonable Person Standard With No Restrictions

All but three of the Commenters support adoption of Alternative No. 2.[135] The Commenters urging the Commission to adopt Alternative No. 2 argue that this Alternative will permit Funds to tailor their investment strategies to financial and market conditions during the term of the decommissioning liability as well as to diversify investments into a broad range of asset classes, and provide higher long-term returns. According to these Commenters, by maximizing returns consistent with acceptable risk, Alternative No. 2 will allow the funding of the decommissioning of nuclear units with less contribution from ratepayers than would be the case either under a continuation of the current guidelines (Alternative No. 1) or under a reasonable person standard with express constraints (Alternative No. 3).[136] These Commenters submit that the flexibility that Alternative No. 2 offers will provide the greatest assurance that adequate funds will be available at the time of decommissioning, at the minimum possible cost to ratepayers.[137]

In the NOPR, the Commission asked whether the ''reasonable person'' standard should encompass the ''prudent person'' standard, which has long governed trust investment,[138] or whether it should, for example, embody the ''prudent investor'' standard.[139] The Commission pointed out that the two standards are different. The prudent person standard focuses on each investment individually and proscribes certain investments as too risky.[140] The prudent investor standard, in contrast, does not focus on any single investment, but rather insists on evaluating the entire portfolio (and thus allows more risk for individual investments within a portfolio).[141] The Commission also requested comments on the use of other standards to govern Fund investments.[142]

Several Commenters recommending that the Commission adopt Alternative No. 2 ask the Commission to adopt the ERISA standard. These Commenters support the ERISA standard because it has a precise, statutory definition, has served policymakers well for 20 years, has widespread applicability, has a body of case law that clearly defines its parameters, and is familiar to investors, investment managers and fiduciaries throughout the country.[143]

These Commenters submit that, because the ERISA standard focuses on the entire investment portfolio over which the fiduciary has authority, it is superior to a standard that views reasonableness on an investment-by-investment basis.[144] They note that the ERISA standard imposes a duty to diversify the type of investments. They maintain that this duty is fundamental to prudent investment, because it permits a fiduciary to tailor portfolios to meet the needs and circumstances of each trust. They argue that this perspective is critical to Fund investment, given the variety of variables to consider in connection with implementing a long-term investment program for a nuclear power plant decommissioning fund.[145] They maintain that, for any given level of assumed risk, one may obtain a higher return by investing in different classes of assets than by investing in a single asset class. They contend that, because of the long time span of decommissioning and the inflation sensitivity of decommissioning costs, Funds should invest in common stocks as well as in fixed-income securities.[146]

These Commenters acknowledge that equities are more risky than fixed-income investments, because the return the investor may receive in any given year can vary significantly from the average return.[147] But they submit that, because the value of a fixed-income security declines as interest rates rise, over time, increases in interest rates and inflation can cause the real return (nominal return minus inflation) of a fixed-income portfolio to decline. Commenters submit that, to meet or exceed the rate of inflation, an investment portfolio should offset the lack of inflation protection in fixed-income securities with the inflation protection inherent in common stock investments. That is, a Fund should participate in *both* classes of investments.[148]

These commenters submit that it is fundamental to prudent investment policies and practices that a fiduciary should invest according to the risk and return objectives reasonably suited to the Fund; accordingly, they maintain, the standard of prudence should apply

[133] New York State Comments at 4.

[134] *Id.*

[135] New England Power and the Public Utility Commissions of Michigan and Pennsylvania support Alternative No. 3.

[136] *E.g.*, Carolina Power & Light Comments at 3.

[137] *E.g.*, Carolina Power & Light Comments at 4; Edison Electric Comments at 2–4, 6, 9, 11–13; Consolidated Edison Comments at 5; Cooperatives Comments at 9–14; Duke Comments at 4; Florida Commission Comments at 2; New Hampshire Committee Comments at 1; NARUC Comments at 5, 12; Nuclear Energy Comments at 1–2; Nuveen Comments at 2–10; South Carolina E&G Comments at 1–2.

[138] *See* Restatements (Second) of Trusts § 227 (1959).

[139] *See* Restatement (Third) of Trusts § 227 (1992).

[140] *See* Restatements (Second) of Trusts § 227 & comments a through o (1959).

[141] *See* Restatement (Third) of Trusts § 227 (1992).

[142] 59 FR at 28300, IV FERC Stats. & Regs., Proposed Regulations at 32,854.

[143] *E.g.*, Bernstein Comments at 2; Edison Electric Comments at 11–12; Duke Comments at 3–4; Investment/Trust/Utility Companies Comments at 5–6; NISA Comments at 1–2; Wisconsin Electric Comments at 1–2. According to Carolina Power & Light, at the end of 1993, the ERISA standard governed the management of about $1.2 trillion in corporate pension fund assets. Carolina Power & Light Comments at 5.

[144] *E.g.*, Bernstein Comments at 2; Edison Electric Comments at 2–6; Investment/Trust/Utility Companies Comments at 5–6.

[145] *E.g.*, Bernstein Comments at 2.

[146] *E.g.*, Bernstein Comments at 2; Carolina Power & Light Comments at 8; Cooperatives Comments at 8–12; Edison Electric Comments at 4–7, 9–12; Investment/Trust/Utility Companies Comments at 4–6.

[147] *E.g.*, Carolina Power & Light Comments at 9; New York State Comments at 4; Nuveen Comments at 9 (''[C]ommon stocks are generally regarded as the riskiest asset class.'').

[148] *E.g.*, Carolina Power & Light Comments at 8; Cooperatives Comments at 10–12; Edison Electric Comments at 11–15; New York State Comments at 4–7; Nuveen Comments at 3–10.

to the overall investment portfolio rather than to any single investment.[149]

Wisconsin Electric submits that the Commission should adopt the ERISA standard because that standard provides the flexibility to efficiently manage Fund assets at the lowest possible cost to utility customers, balancing risk and reward, while taking into account such factors as general economic conditions, the expected operating life of the plant, and the expected timing of the cash requirements associated with decommissioning.[150]

While these Commenters refer to the ERISA standard, it is clear that they are really asking the Commission to adopt the ''prudent investor'' standard as delineated in the Restatement (Third) of Trusts (1992). This is obvious because, when these Commenters refer to the ERISA standard, many of them refer to managing risk by focusing on the entire portfolio (the signature characteristic of the prudent investor standard) [151] rather than by examining individual investments (the hallmark of the prudent person standard). For example, Edison Electric submits that, ''[t]he concept of a prudent portfolio has replaced the concept of a prudent investment.'' [152]

Edison Electric states that ''[T]he ERISA * * * standard is * * * based upon the same rationale as the ''prudent investor'' standard of the Restatement (Third) of the Law of Trusts * * * § 227. * * * '' [153] And certain Commenters advocating adoption of the ERISA standard refer to investments by a ''prudent investor,''[154] a ''prudent investment manager''[155] or even by a ''prudent expert.''[156]

Other Commenters advocating adoption of Alternative No. 2 refer directly to the prudent investor standard as it appears in the Restatement (Third) of Trusts,[157] or to ''prudent investment principles''[158] without referring to the ERISA standard. It is clear from all of these references that those advocating adoption of Alternative No. 2 are seeking Commission adoption of the ''prudent investor'' standard.

C. Alternative No. 3: A Reasonable Person Standard With Certain Restrictions on the Quality and Quantity of Fund Investments

Three Commenters support Alternative No. 3.[159] The remaining Commenters oppose this Alternative, arguing that the express limitations are contrary to modern investment practices and reduce the flexibility of fiduciaries. The Commenters opposing Alternative No. 3 maintain that the end of a units's licensed life is not necessarily the appropriate measuring point for determining the need for cash to pay for decommissioning costs. They submit that, depending on the method of decommissioning and the availability of a national spent nuclear fuel repository, many Funds may expend substantial amounts for decommissioning costs long after the expiration of the operating license.[160] They criticize the proposed market capitalization and minimum credit rating standards as unrealistically eliminating from investment consideration more than 60 percent of the stocks listed in the Standard & Poor's 500, as well as large over-the-counter, domestic small capitalization, international and preferred stocks. They also maintain that the proposed single-company and single-industry limitations are too tight.[161]

Edison Electric maintains that if the Commission adopts the prudent investor standard, there will be no need for express guidelines, since modern investment practices and modern investment guidelines allow fiduciaries the flexibility to address specific situations that Funds will face.[162]

Cooperatives and New York State express a similar thought. They criticize Alternative No. 3 not for the restrictions that it contains, ''but, rather, because it contains requirements at all.''[163] They submit that the prudent investor rule would not function efficiently if the Commission were to restrict the quality and type of investments that a fiduciary may make. [164]

Of those favoring the adoption of Alternative No. 3, New England Power supports the Alternative outright, without modification. New England Power maintains that Alternative No. 3 strikes a reasonable balance between the goals of ensuring sufficient funds to safely decommission nuclear power plants and minimizing the cost to the customers.[165] New England Power states that Alternative No. 3 allows for sufficient diversification in investments to provide returns over time that would exceed those derived from investments made under the Black Lung investment guidelines, and will, accordingly, reduce customer contributions for decommissioning. New England Power argues that Alternative No. 3 improves upon Alternative No. 2, by establishing quality and quantity guidelines that would limit the risk associated with various possible investments.[166]

The Michigan Commission supports the Adoption of Alternative No. 3 with certain constraints on management fees and certain additions regarding the Fund's risk-adjusted yield and unit-cost. The Michigan Commission would also require that the fiduciary document the reasons for making various investments. The Michigan Commission also recommends that the aggregate value and Standard & Poor's rating requirements should not apply to investments in index funds.[167]

The Pennsylvania Commission recommends that, under Alternative No. 3, the Commission allow a fiduciary to speculate with not more than 25 percent of the corpus of the Fund. The Pennsylvania Commission recommends that the Commission require that the remaining portion of the Fund's assets remain in Black Lung grade investments.[168]

Commission Rulings

We agree with the majority of commenters that Alternative No. 3: a reasonable person standard with certain restrictions on the quality and quantity of Fund investments, unduly reduces investment flexibility. As Northeast Utilities points out, there is no single set of investment limitations that will adequately take into account the factors affecting decommissioning of each nuclear generating plant. A Fund manager must have sufficient leeway to address a Fund's needs under a variety

[149] *E.g.*, Carolina Power & Light Comments at 10; Cooperatives Comments at 9; Edison Electric Comments at 2, 4, 13.

[150] Wisconsin Electric Comments at 2.

[151] *E.g.*, Bernstein Comments at 2; Carolina Power & Light Comments at 10; Duke Comments at 4; Investment/Trust/Utility Companies Comments at 5; Wisconsin P&L Comments at 1.

[152] Edison Electric Comments at 6, *citing*, Hagin, *Modern Portfolio Theory* (1979) 12.

[153] Edison Electric Comments at 4 (underscoring deleted).

[154] New Hampshire Committee Comments at 1; Nuclear Energy Comments at 2 (''prudent implementation of modern investment practices'').

[155] Nuveen Comments at 9.

[156] Carolina P&L Comments at 10.

[157] Cooperatives Comments at 7–12; New York State Comments at 6 n.4.

[158] Consumers Power Comments at 3.

[159] As noted, these Commenters are New England Power and the Michigan and Pennsylvania Commissions.

[160] *See supra* n.36.

[161] *E.g.*, Bernstein Comments at 3–4; Consolidated Edison Comments at 3–5; Consumers Power Comments at 5; Edison Electric Comments at 2–3, 16, 19–20; Duke Comments at 5; Entergy Comments at 4; Indiana Michigan Comments at 8; Investment/Trust/Utility Companies Comments at 7–8; Northeast Utilities Comments at 11–13; Nuveen Comments at 11–12; Wisconsin Electric Comments at 2–3; Wisconsin Power Comments at 2.

[162] Edison Electric Comments at 17–18.

[163] New York State Comments at 7–8.

[164] Cooperatives Comments at 13.

[165] New England Power Comments at 3.

[166] *Id.* at 4.

[167] Michigan Commission Comments at 1–3.

[168] Pennsylvania Commission Comments at 16.

of circumstances and to balance Fund security while obtaining the maximum possible return under the circumstances.[169] Accordingly, we will not adopt Alternative No. 3.

Nor will we adopt Alternative No. 1: continuation of Black Lung restrictions. Commenters have persuaded us that public utilities' decommissioning requirements can best be funded by permitting investment of ratepayers funds according to Alternative No. 2, a reasonable person standard with no specified investment restrictions. We agree that it is possible to protect the integrity of an investment portfolio *as a whole* by investing in various classes of assets with offsetting risks. This strategy will allow investment managers to adjust quickly to financial and market conditions and should, over time, produce higher returns than Black Lung investments and lower the amount of ratepayer funds necessary for decommissioning.

The reasonable person standard, with its emphasis on a balanced portfolio and offsetting risks, is a very sophisticated investment approach, requiring considerable expertise to implement successfully. Public utilities must choose trained, experienced, professional investment managers who are skilled in the art of offsetting risk, and must ensure that they act with the level of skill, care, diligence and caution expected of a professional planner in light of the purposes, terms, distribution requirements, and other circumstances of the Fund.

Several Commenters observe that Black Lung investments have a place in a balanced portfolio under appropriate circumstances.[170] They state that it would be reasonable for a prudent investor to use these more conservative investments to offset the higher risk of other investments. And Commenters recognize that, as the date at which the utility must meet decommissioning expenses comes closer, greater liquidity and more conservative investments should be the norm of the portfolio balance.[171] We agree that Black Lung investments still have a place in a Fund's investment portfolio under the unconstrained, reasonable person investment approach. We also agree that a reasonable approach would be to decrease the percentage of equity investment in a portfolio, and increase the amount of lower risk investments, as the time for expending the funds approaches.

The Alternative that we are adopting in the Final Rule dictates our choice of the precise definition and content of the reasonable person standard. We will define a ''reasonable person'' as a ''prudent investor.'' We choose the prudent investor standard because it does not focus on any single investment but rather insists on an evaluation of the entire portfolio.[172] This is consistent with the unconstrained reasonable person investment approach. If investment managers are to properly implement the reasonable person investment strategy, without restrictions, they are going to need the flexibility that the prudent investor standard provides.

We see no need to incorporate the ERISA standard into this proceeding. ERISA deals with a fundamentally different liability. Rather, we will adopt Edison Electric's, Cooperatives', and Pennsylvania Commission's recommendation and base the prudent investor standard on the principles set forth in § 227 of the Restatement (Third) of Trusts (1992).[173] This will accomplish the objective of allowing for flexibility of Fund investment, without importing into Fund investment standards all of the law surrounding employee pension funds.

Also, it is unclear that the ERISA standard is sufficiently exact to adequately address the contingencies of nuclear plant decommissioning. ERISA requires of a fiduciary ''familiarity'' not ''expertise'' and requires diversification of investment assets not to prevent but merely to ''minimize'' the risk of large losses to the fund. The Restatement (Third) of Trusts is more rigorous in its demands on a fiduciary.[174]

The prudent person standard, which we also considered in the NOPR, focuses on each investment individually and proscribes certain investments as too risky.[175] This standard is inconsistent with an investment strategy of offsetting risk, which is at the heart of the reasonable person investment approach.

The prudent person investment standard would not allow fiduciaries to rapidly adjust to ever changing market and financial conditions as they must if they are to correctly manage the Fund portfolio as a whole.

X. Conclusion Regarding Selection of Alternative

For the reasons given immediately above, we are adopting for Fund investments Alternative No. 2, the reasonable person standard, without constraints. We define a ''reasonable person'' as a prudent investor, as delineated in the Restatement (Third) of Trusts (1992).

XI. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[176]

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[169] Northeast Utilities Comments at 10–11.

[170] *E.g.,* Carolina Power & Light Comments at 8 (Because of long time-horizon and sensitivity to inflation, Funds should invest in common stocks as well as in fixed-income securities); Cooperatives Comments at 9 (A diversified portfolio should have its assets dispersed among a variety of equities and fixed-income investments); Indiana Michigan Comments at 2 (Black Lung or other conservative investments are always acceptable components of the Fund); Northeast Utilities Comments, Exhibit C at 1 (trust to maintain a balanced portfolio consisting of equity and fixed-income securities); Nuveen Comments at 3 (Fund portfolio should contain a targeted range of fixed-income and equity securities to manage market risk).

Edison Electric goes further than this and insists that Black Lung investments are not imprudent and continue to be an accepted investment alternative. Edison Electric Comments at 15.

[171] *E.g.,* Duke Comments at 5 (''[I]t would be logical to have higher equity exposure in the early years of the Fund than in the concluding years. . . .''); Entergy Comments at 3 (Equity phase-down should begin five years before expected license termination); New York State Comments at 6; Northeast Utilities Comments at 12 and Exhibit C at 1 (Under normal circumstances equity percentage of Fund portfolio should decrease as decommissioning cash outflow approaches [12]; Phase-out of equity investments to begin five years before the expected need for significant decommissioning expenditures [Exhibit C at 1]); Nuveen Comments at 11 (Percentage of equity investment should decline as date of expenditure of substantial portion of Fund assets approaches); Pennsylvania Commission Comments at 12, Reply Comments at 9 (returns and invested principal should be moved back into relatively secure instruments before decommissioning); Wisconsin Power & Light Comments at 2 (The expected liquidity needs of the Fund should determine the reduction in equity exposure.).

[172] *See* Restatement (Third) of Trusts § 227 (1992).

[173] See Edison Electric Comments at 4–5; Cooperatives Comments at 7–12; Pennsylvania Commission Comments at 15 and Reply Comments at 14.

[174] For example, Section 227 of the Restatement (Third) of Trusts includes ''passive strategies'' as a practical investment alternative that Trustees must consider. The Restatement points out that investing in index funds that track major stock exchanges or widely published lists of publicly traded stocks offers pricing security and economies of purchase in essentially efficient markets. *See* Restatement (Third) of Trusts, § 227, comment h., Prudent Investment: Theories and Strategies (1992).

[175] *See* Restatement (Second) of Trusts § 227 & comments a through o (1959). In the NOPR, the Commission also referenced the standard that it uses to determine the prudence of specific costs, citing *New England Power, supra. See* 59 FR 28,300, IV FERC Stats. & Regs, Proposed Regulations 32,853–54. In the NOPR, we recognized ''that what we are concerned with here is a different factual setting.'' *Id.* We agree with Edison Electric that ''pursuing a prudent investment strategy is not necessarily the same thing as incurring a prudent cost.'' Edison Electric Comments at 16.

[176] Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47987 (Dec. 17, 1987), FERC Stats. & Regs.,

The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment—such as electric rate filings under sections 205 and 206 of the FPA and the establishment of just and reasonable rates.[177] The Final Rule, regarding the collection and subsequent investment of monies to fund nuclear plant decommissioning, involves such matters. Accordingly, no environmental consideration is necessary.

XII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[178] requires rulemakings to either contain a description and analysis of the effect that the proposed rule will have on small entities or to contain a certification that the rule will not have a substantial economic impact on a substantial number of small entities. Most public utilities to which the proposed rule would apply do not fall within the definition of small entity.[179] Consequently, the Commission certifies that this proposed rule will not have ''a significant economic impact on a substantial number of small entities.''

XIII. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[180] require that OMB approve certain information collection requirements imposed by an agency. The information collection requirements in this proposed rule are contained in FERC–516 ''Electric Rate Filings'' (1902–0096).

The Commission uses the data collected in these information requirements to carry out its regulatory responsibilities under the FPA and the Energy Policy Act of 1992. The Commission's Office of Electric Power Regulation uses the data for determination of electric rate filings submitted by industry. The Office of the Chief Accountant uses the data to ensure that jurisdictional companies comply with the Uniform System of Accounts.

Interested persons may send comments regarding collection of information to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, (202) 208–1415]; and to the Office of Management and Budget, Washington, D.C. 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission—(202) 395–3087; FAX: (202) 395–5167].

XIV. Effective Date

This rule is effective July 31, 1995.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Incorporation by reference, Reporting and recordkeeping requirements.

By the Commission. Commissioners Hoecker and Massey concurred with a separate statement attached.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends Part 35, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. 18 CFR Part 35 is amended by adding Subpart E—Regulations Governing Nuclear Plant Decommissioning Trust Funds, consisting of § 35.32 and § 35.33, to read as follows:

Subpart E—Regulations Governing Nuclear Plant Decommissioning Trust Funds

Sec.
35.32 General Provisions
35.33 Specific Provisions

§ 35.32 General provisions

(a) If a public utility has elected to provide for the decommissioning of a nuclear power plant through a nuclear plant decommissioning trust fund (Fund), the Fund must meet the following criteria:

(1) The Fund must be an external trust fund in the United States, established pursuant to a written trust agreement, that is independent of the utility, its subsidiaries, affiliates or associates.

(2) The utility may provide overall investment policy to the Trustee or Investment Manager, but it may do so only in writing, and neither the utility nor its subsidiaries, affiliates or associates may serve as Investment Manager or otherwise engage in day-to-day management of the Fund or mandate individual investment decisions.

(3) The Fund's Investment Manager must exercise the standard of care, whether in investing or otherwise, that a prudent investor would use in the same circumstances. The term ''prudent investor'' means a prudent investor as described in *Restatement of the Law (Third), Trusts § 227* including general comments and reporter's notes, pages 8–101. St. Paul, MN: American Law Institute Publishers, (1992). ISBN 0–314–84246–2. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104, and are also available in local law libraries. Copies may be inspected at the Federal Energy Regulatory Commission's Library, Room 8502, 825 North Capitol St., N.E., Washington, D.C. or at the Office of the Federal Register, 400 North Capitol St., N.W., Room 700, Washington, D.C.

(4) The Trustee and any other Fiduciary shall have a net worth of at least $100 million. In calculating the $100 million net worth requirement, the net worth of the Fiduciary's parent corporation and/or affiliates may be taken into account only if such entities guarantee the Fiduciary's responsibilities to the Fund.

(5) The Trustee or Investment Manager shall keep accurate and detailed accounts of all investments, receipts, disbursements and transactions of the Fund. All accounts, books and records relating to the Fund shall be open to inspection and audit at reasonable times by the utility or its designee or by the Commission or its designee. The utility or its designee must notify the Commission prior to performing any such inspection or audit. The Commission may direct the utility to conduct an audit or inspection.

(6) Absent the express authorization of the Commission, no part of the assets of the Fund may be used for, or diverted to, any purpose other than to fund the costs of decommissioning the nuclear power plant to which the Fund relates, and to pay administrative costs and other incidental expenses, including taxes, of the Fund.

(7) If the Fund balances exceed the amount actually expended for decommissioning after decommissioning has been completed, the utility shall return the excess jurisdictional amount to ratepayers, in a manner the Commission determines.

(8) Except for investments tied to market indexes or other mutual funds, the Investment Manager shall not invest in any securities of the utility for which

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Regulations Preambles 1986–1990 ¶ 30,783 (1987)) (*codified* at 18 CFR Part 380).

[177] 18 CFR 380.4(a)(15).

[178] 5 U.S.C. 601–612.

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

[180] 5 CFR 1320.13.

it manages the funds or in that utility's subsidiaries, affiliates, or associates or their successors or assigns.

(9) The utility and the Fiduciary shall seek to obtain the best possible tax treatment of amounts collected for nuclear plant decommissioning. In this regard, the utility and the Fiduciary shall take maximum advantage of tax deductions and credits, when it is consistent with sound business practices to do so.

(10) Each utility shall deposit in the Fund at least quarterly all amounts included in Commission-jurisdictional rates to fund nuclear power plant decommissioning.

(b) The establishment, organization, and maintenance of the Fund shall not relieve the utility or its subsidiaries, affiliates or associates of any obligations it may have as to the decommissioning of the nuclear power plant. It is not the responsibility of the Fiduciary to ensure that the amount of monies that a Fund contains are adequate to pay for a nuclear unit's decommissioning.

(c) A utility may establish both qualified and non-qualified Funds with respect to a utility's interest in a specific nuclear plant. This section applies to both ''qualified'' (under Internal Revenue Code (26 U.S.C. 468A) or any successor section) and non-qualified Funds.

(d) A utility must regularly supply to the Fund's Investment Manager, and regularly update, essential information about the nuclear unit covered by the Trust Fund Agreement, including its description, location, expected remaining useful life, the decommissioning plan the utility proposes to follow, the utility's liquidity needs once decommissioning begins, and any other information that the Fund's Investment Manager would need to construct and maintain, over time, a sound investment plan.

(e) A utility should monitor the performance of all Fidiciaries of the Fund and, if necessary, replace them if they are not properly performing assigned responsibilities.

(f) These regulations apply only to Commission-jurisdictional funds.

§ 35.33 Specific provisions.

(a) In addition to the general provisions of § 35.32, the Trustee must observe the provisions of paragraph (b) of this section.

(b) The Trustee may use Fund assets only to:

(1) Satisfy the liability of a utility for decommissioning costs of the nuclear power plant to which the Fund relates as provided by § 35.32; and

(2) Pay administrative costs and other incidental expenses, including taxes, of the Fund as provided by § 35.32;

(3) To the extent that the Trustee does not currently require the assets of the Fund for the purposes described in paragraphs (b)(1) and (b)(2) of this section, the Investment Manager, when investing Fund assets, must exercise the same standard of care that a reasonable person would exercise in the same circumstances. In this context, a ''reasonable person'' means a prudent investor as described in *Restatement of the Law, (Third), Trusts § 227,* and including general comments and reporter's notes, pages 8–101. St. Paul, MN: American Law Institute Publishers, 1992. ISBN 0–314–84246–2. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104, and are also available in local law libraries. Copies may be inspected at the Federal Energy Regulatory Commission's Library, Room 8502, 825 North Capitol St., NE., Washington, DC or at the Office of the Federal Register, 400 North Capitol St., NW., Room 700, Washington, DC.

(c) The utility must submit to the Commission by April 1, 1996 and by March 31 of each year thereafter, a copy of the financial report furnished to the utility by the Fund's Trustee that shows for the previous calendar year:

(1) Fund assets and liabilities at the beginning of the period;

(2) activity of the Fund during the period, including amounts received from the utility, purchases and sales of investments, gains and losses from investment activity, disbursements from the Fund for decommissioning activity and payment of Fund expenses, including taxes; and

(3) Fund assets and liabilities at the end of the period. The report should not include the liability for decommissioning.

(d) If an independent public accountant has expressed an opinion on the report or on any portion of the report, then that opinion must accompany the report.

Appendix A

Investment/Trust/Utility Companies

Ark Asset Management Co., Inc.
Bank of New York
Delaware Investment Advisers
Fidelity Management Trust Co.
J.P. Morgan Co.
Loomis, Sayles & Company
MD SASS Investors Services, Inc.
Mellon Bank
National Investment Services of America, Inc.
NBD Bank, NA
Nuveen Duff & Phelps Investment Company
Payden & Rygel
Pittsburgh National Bank
PNC Bank
Sanford Bernstein & Company, Inc.
Scudder, Stevens & Clark, Inc.
State Street Bank and Trust Company
T. Rowe Price Associates
Wellington Management Co.

Appendix B

Utility Companies

Arizona Public Service Co.
Arkansas Power & Light Co.
Carolina Power & Light Co.
Central Power and Light Co.
Cleveland Electric Illuminating Co.
Commonwealth Edison Co.
Connecticut Light & Power Co.
Connecticut Yankee Atomic Power Co.
Delmarva Power & Light Co.
Detroit Edison Co.
Duke Power Co.
Florida Power & Light Co.
Florida Power Corp.
Gulf States Utilities Co.
Houston Lighting & Power Co.
Illinois Power Co.
Indiana Michigan Power Co.
Iowa Electric Light and Power Co.
Jersey Central Power & Light Co.
Louisiana Power & Light Co.
Madison Gas and Electric Co.
Maine Yankee Atomic Power Co.
Metropolitan Edison Co.
Niagara Mohawk Power Corp.
North Atlantic Energy Co.
Northern States Power Co.
Ohio Edison Co.
Pacific Gas & Electric Co.
Pennsylvania Electric Co.
Pennsylvania Power & Light Co.
Pennsylvania Power Co.
Philadelphia Electric Co.
Public Service Co. of New Hampshire
Public Service Electric and Gas Co.
Rochester Gas and Electric Co.
Southern California Edison Co.
System Energy Resources, Inc.
Texas Utilities Electric Co.
Toledo Edison Co.
Union Electric Co.
Vermont Yankee Nuclear Power Corp.
Virginia Electric Power Co.
Western Massachusetts Electric Co.
Western Resources, Inc.
Wisconsin Electric Power Co.
Wisconsin Power and Light Co.
Wisconsin Public Service Corp.

Appendix C

NUCLEAR DECOMMISSIONING FUNDS—12/31/93 FUNDING STATUS

[Dollars in millions—Ranking by 12/31/93 funds]

Company	License exp (avg. years)	MW Nuclear capacity	Decom cost est by company		12–31–93 fund
			Amt. (base year)	Amt./KW	
Commonwealth Ed	2008–2026(22)	11,638	$4,060(93)	$349	914
SCECorp	2004–2028(21)	2,560	1,000(93)	390	853
Pacific G&E	2015–2016(21)	2,253	1,000(93)	443	576
FPL Group	2007–2023(21)	2,885	935(93)	324	445
Duke Power	2013–2026(26)	5,078	995(90)	188	319
Northern State Power	2010–2014(18)	1,640	750(93)	457	302
Northeast Utilities	2010–2026(24)	2,738	1,127(93)	408	238
Wisconsin Energy	2010–2013(18)	970	280(93)	289	232
Dominion Resources	2012–2020(22)	3,200	1,000(93)	312	226
Carolina P&L	2010–2026(24)	2,711	999(93)	368	222
GPU	2009–2014(18)	2,369	1,044(93)	441	219
Entergy	2014–2024(25)	4,646	1,339	288	193
San Diego G&E	2004–2013(15)	517	322(93)	623	191
Southern Company	2014–2029(28)	3,524	1,123(91)	319	185
PS Enterprise Group	2008–2026(23)	2,842	681(90)	240	175
CMS Energy	2000–2007(10)	846	607(93)	717	171
Am Elec Pi	2014–2017(22)	2,130	1,100(91)	516	170
PEPCO Energy	2008–2029(24)	3,958	643(93)	162	160
Connecticut Yankee	2007(13)	582	309(92)	530	140
Consolidated Ed	2013(19)	1,124	600(93)	534	137
Florida Progress	2016(22)	703	308(93)	438	118
Niagara Mohawk	2009–2026(24)	1,053	541(93)	514	114
Vermont Yankee	2012(18)	528	240(92)	454	100
Yankee Atomic	2000(6)	175	247(92)	1,411	98
Baltimore G&E	2014–2016(21)	1,650	703(92)	428	93
Pennsylvania P&L	2022–2024(29)	1,890	725	384	83
Centerior Energy	2017–2027(28)	1,843	615(92)	334	74
Maine Yankee	2008(14)	900	317(93)	352	69
Boston Edison	2012(18)	670	400(91)	597	66
Rochester G&E	2009–2026(23)	621	185(93)	298	63
Wisconsin PS	2013(19)	220	149(93)	677	61
IES Industries	2014(20)	396	223(93)	563	51
Altantic Energy	2008–2026(23)	374	65(87)	175	46
Union Electric	2024(30)	1,150	372(93)	323	46
Pinnacle West	2024–2026(32)	1,109	407(93)	367	45
WPL Holdings	2013(19)	219	149(93)	677	45
Iowa ILL G&E	2012(18)	394	173(93)	439	40
Texas Utilities	2030–2032(37)	2,300	599(92)	260	38
El Paso Elec	2024–2027(32)	603	221(93)	366	30
Ohio Edison	2016–2027(28)	1,255	382(92)	304	30
Delmarva P&L	2008–2020(20)	321	117(93)	364	29
Madison G&E	2013(19)	95	61(92)	642	25
Scana Corp	2022(28)	593	152(93)	256	25
Detroit Ed	2025(31)	1,100	471(93)	428	24
Houston Ind	2027–2028(33)	770	146(89)	190	19
DOE Inc	2016–2027(28)	712	240(92)	337	18
Illinois Power	2026(32)	823	344(93)	418	17
Central & SW	2027–2028(33)	630	85(86)	135	15
Kansas City P&L	2025(31)	540	174(93)	322	14
Western Resources	2025(31)	540	174(93)	322	13
PS New Mexico	2024–2026(32)	390	142(93)	384	11
Long Island Lighting	2026(32)	194	80(93)	412	7
NY State E&G	2026(32)	194	74(93)	381	6
Central Hudson G&E	2027(33)	97	38(93)	392	5

Source: Nuveen Comments, Exhibit X.

Appendix D—Concurring Statements

HOECKER and MASSEY, Commissioners, *concurring*:

We support today's order. However, the order's reliance on the ''prudent investor'' standard does not spell out sufficiently certain important principles to which we think investment management fiduciaries must adhere. By selecting Alternative 2, which maximizes the investment flexibility of the fiduciary, over Alternative 3, which might specifically limit the investment manager's discretion in some respects, the Commission does not imply that ''anything goes'' in structuring and handling an investment portfolio. The comments make clear, for example, that

indeed certain fundamentals are always followed by prudent investors.[1]

The financial marketplace offers investors many different strategies. Some of these strategies would satisfy the prudent investor standard; others would not. Neither we nor the Commission can anticipate each possible strategy or investment option and decide whether it is prudent. But, a failure to invest in accordance with widely-held and time-honored practices may be irresponsible, if not imprudent. In that regard, we believe implementation of the following two strategies is, in broad terms, required of all investment management fiduciaries.

First, as the time nears when fund assets will be spent on decommissioning work, assets should be phased out of equity investments and into less volatile and more conservative investments. Many commenters endorsed this principle.[2] Similarly, Maine Yankee Atomic Company attached to its comments a financial advisor's report recommending a five-year phase out of equity investments just before the fund assets would be spent on decommissioning work. Today's order acknowledges the validity of this principle.[3] While nuclear plant owners may choose different decommissioning strategies and thus have different timelines for spending fund assets, an appropriately-timed equity phase-out would always appear to be prudent.

Second, just as a prudent investor would invest little or no part of its portfolio in penny stocks and junk bonds, a prudent investor would limit the extent of its investments in derivatives. Derivatives may serve a useful role in offsetting the risk of other investments. For example, if a portfolio contains government or corporate bonds, perhaps the sensitivity of these bonds to interest rate fluctuations could be offset by hedging in derivatives. A prudent investor would, in our view, limit investments in derivatives, if any, solely to such risk-reducing uses.

With these additional thoughts, we concur in today's order.

James J. Hoecker,

Commissioner.

William L. Massey,

Commissioner.

[FR Doc. 95–15303 Filed 6–29–95; 8:45 am]

BILLING CODE 6717–01–P

[1] *See, e.g.*, Order, slip op. at 65 n.175 and accompanying text.

[2] *See Id.*, at 65 n.177.

[3] *Id.*, at 66.

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AE10

Administrative Review Process, Prehearing Proceedings and Decisions by Attorney Advisors

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are adding new rules which modify, on a temporary basis, the prehearing procedures we follow in claims for Social Security or Supplemental Security Income (SSI) benefits based on disability. Under the final rules, attorney advisors in our Office of Hearings and Appeals (OHA) have the authority to conduct certain prehearing proceedings, and where the documentary record developed as a result of these proceedings warrants, to issue decisions that are wholly favorable to the parties to the hearing. Because requests for an administrative law judge (ALJ) hearing have increased dramatically in recent years, and cases pending in our hearing offices have reached unprecedented levels, we have taken a number of actions designed to help us decide these cases more efficiently. These final rules are an important part of our efforts in this regard.

EFFECTIVE DATE: June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Social Security Boulevard, Baltimore, Maryland 21235, (410) 965–6243.

SUPPLEMENTARY INFORMATION:

Background

The Social Security Administration (SSA) decides claims for Social Security benefits under title II of the Social Security Act (the Act) and for SSI benefits under title XVI of the Act in an administrative review process that generally consists of four steps. Claimants who are not satisfied with the initial determination we make on a claim may request reconsideration. Claimants who are not satisfied with our reconsidered determination may request a hearing before an ALJ, and claimants who are dissatisfied with an ALJ's decision may request review by the Appeals Council. Claimants who have completed these steps, and who are not satisfied with our final decision, may request judicial review of the decision in the Federal courts.

Generally, when a claim is filed for Social Security or SSI benefits based on disability, a State agency makes the initial and reconsideration disability determination for us. A hearing conducted after we have made a reconsideration determination is held by an ALJ in one of the 132 hearing offices we have nationwide.

Applications for Social Security and SSI benefits based on disability have risen dramatically in recent years. The number of new disability claims SSA received in Fiscal Year (FY) 1994—3.56 million—represented a 40 percent increase over the number received in FY 1990. Requests for an ALJ hearing also have increased dramatically. In FY 1994, our hearing offices had almost 540,000 hearing receipts and the overwhelming majority of these were related to requests for a hearing filed by persons claiming disability benefits. In that year, the number of hearing receipts we received exceeded the number of receipts we received in FY 1990 by more than 70 percent. We expect hearing receipts to increase to more than 590,000 in FY 1995.

Despite management initiatives that resulted in a record increase in ALJ productivity in FY 1994, and the hiring of more than 200 new ALJs and more than 650 new support staff in that year, the number of cases pending in our hearing offices has reached unprecedented levels—more than 480,000 at the end of FY 1994 and more than 540,000 at the end of May 1995.

On September 19, 1994, the Commissioner of Social Security published a *Plan for a New Disability Claim Process* in the **Federal Register** (59 FR 47887). That document sets forth our long term plans for redesigning and fundamentally improving the overall disability claim process. On a separate track from that longer term plan, we have developed a number of short term initiatives to process cases more efficiently and, therefore, to reduce the number of cases pending in our hearing offices. As part of our short term disability process improvements, we are issuing these final regulations that make a temporary change in our administrative review procedures.

Under these final rules, attorney advisors will conduct certain prehearing proceedings and, where appropriate, issue decisions that are wholly favorable to the claimant and any other party to the hearing. These procedures will remain in effect for a period of time not to exceed two years from the effective date of these final rules unless they are extended by the Commissioner of Social Security by publication of a final rule in the **Federal Register**.

Regulatory Provisions

We have added new §§ 404.942 and 416.1442 to our regulations to authorize attorney advisors in OHA to conduct certain prehearing proceedings and, where appropriate, make decisions based on the documentary record that are wholly favorable to the parties to the hearing. Our purpose in issuing these rules is to expedite the processing of cases pending at OHA without infringing on a claimant's right to a hearing before an ALJ.

The authority of an attorney advisor to conduct prehearing proceedings and to make wholly favorable decisions under these final rules is temporary, and applies only in the limited circumstances described below. Also, the attorney advisor's conduct of certain prehearing proceedings will not delay the scheduling of a hearing before an ALJ. If the prehearing proceedings are not concluded before the hearing date, the case will be sent to the ALJ unless a decision wholly favorable to the claimant and all other parties is in process, or the claimant and all other parties to the hearing agree in writing to delay the hearing until the prehearing proceedings are completed.

Prehearing proceedings may be conducted by the attorney advisor under this rule if new and material evidence is submitted; there is an indication that additional evidence is available; there is a change in the law or regulations; or there is an error in the file or some other indication that a wholly favorable decision may be issued. A decision by an attorney advisor will be mailed to all parties. The notice of decision will state the basis for the decision and advise the parties that an ALJ will dismiss the hearing request unless a request to proceed with the hearing is made by a party within 30 days after the date the notice of the decision is mailed.

We believe that these temporary procedures will enable us to manage our pending hearing requests in a more timely manner. They also may provide information that can help us better identify cases that can be decided without a hearing before an ALJ and improve our ability to narrow the issues that must be resolved before a decision can be made.

The attorney advisor's functions are not designed to change in any significant way the overall rate at which we allow claims for benefits when an individual requests a hearing before an ALJ. In order to assure that no unacceptable change in the overall allowance rate occurs, the Commissioner of Social Security will review management and quality assurance information on an ongoing basis. If there is evidence that the overall allowance rate increases or decreases unacceptably, the Commissioner will curtail use of, or make appropriate adjustments to the attorney advisor procedures, consistent with this regulatory authority.

We find good cause for dispensing in this case with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, and in the notice of proposed rulemaking (NPRM), the number of hearing requests pending at OHA has reached unprecedented levels. In light of the record number of pending hearing requests, the importance we place on ensuring that we adjudicate claims timely and accurately, and the beneficial effect we expect these final rules to have on our ability to provide better service to claimants, we find that it is in the public interest to make these final rules effective upon publication.

Public Comments

These regulatory provisions were published in the **Federal Register** as an NPRM on April 14, 1995 (60 FR 19008). We provided interested parties with a 30 day comment period. We received 82 letters representing the views of over 125 individuals. Most of the comments we received were from individuals employed either as attorney advisors or ALJs in OHA. However, we also received comments from a variety of other sources, including private citizens, claimant representatives, State agencies which make disability determinations for us, and union representatives. After carefully considering the comments received, we have decided to adopt the proposed rule essentially without change.

In general, the comments either strongly supported or strongly opposed adoption of the proposed rule. Only a few of the comments were in any way equivocal, and even these can be properly categorized as either basically supporting or opposing the proposed rule.

Almost all of the comments supporting adoption of the proposed rule did so without recommending changes. While the comments which recommended against adoption of the proposed rule more frequently suggested changes, the changes suggested were generally so substantive that they effectively constituted expressions of disagreement with the concept of the rule as proposed, rather than proposals to change the rule to make it function more effectively. Some of the comments we received were outside the scope of the proposed rule, and therefore have not been addressed. The substantive comments made by the commenters and our responses are summarized below. Because some of the comments were detailed, we had to condense, summarize or paraphrase them. We have, however, tried to summarize the commenters views accurately and to respond to all of the significant issues raise by the commenters.

The comments from individuals employed as attorney advisors unanimously supported adoption of the proposed rule; all but one of the comments from individuals employed as ALJs recommended against adoption of the proposed rule. Most of the remaining comments, including most of those received from private citizens, claimant representatives, and union representatives, supported adoption of the proposed rule.

The comments supporting the adoption of the proposed rule generally did so based on the view that the contemplated changes would result in quicker, more cost-effective service to the public. We agree with these comments; our intent in these final rules is to enhance our ability to decide cases more quickly during the period in which these rules will be effective and, therefore, to improve the level of service we provide to claimants.

The comments from individuals who supported adoption of the proposed rule also stressed the serious detrimental effects the number of pending claims has on both claimants and our hearing offices. These comments also stressed that making fuller use of the experience and expertise of the attorney advisors in OHA constitutes the most effective way that SSA can promptly apply existing resources to process the number of cases pending at OHA in the most expeditious manner. We also agree with these comments.

A number of the commenters who supported adoption of the proposed rule also indicated that the procedures described in the proposed rule should be viewed as a logical and natural extension of the prehearing conference program OHA has already successfully conducted under existing regulatory authority. Many of these comments stressed the importance of the procedures contained in these final rules in preserving the time and skill of the ALJs for use in cases that cannot be decided without a hearing. These comments further noted that the proposed rule would provide the ALJ with the benefit of a better developed record in cases in which an ALJ held a hearing. We concur in these comments.

The comments received from individuals who opposed adoption of the proposed rule also reflected a number of common themes and views. These comments recommended against adoption of the proposed rule on five principal bases: (1) that the proposed rule violated the Administrative Procedure Act (APA) or the Act; (2) that it denied claimants their constitutional rights of due process and equal protection; (3) that it was impractical; (4) that it is unnecessary because of the availability of preferable alternatives; and (5) that it would result in decisions which inappropriately found that claimants were disabled and therefore would result in increased program costs. Our responses to these comments, and to the other comments we received regarding the substance of the rule, are set out in detail below.

Comment: A number of comments received, primarily from individuals employed as ALJs, expressed the view that, for a number of reasons, the proposed rule violated either the APA or the Act and improperly delegated decision making authority to individuals who are not appointed as ALJs. Another commenter expressed the view, however, that the proposed rule was fully consistent with the Act and the APA.

Response: We do not agree that these final rules violate either the APA or the Act. The Act directs the Commissioner of Social Security to make decisions as to the rights of any individuals applying for disability benefits. The Act also provides that the Commissioner shall provide an individual who makes a showing in writing that his or her rights may be prejudiced by any decision that the Commissioner has rendered, with an opportunity for a ''hearing'' regarding his or her right to benefits. Currently, by regulation, the Commissioner has provided that such a ''hearing'' shall be before an ALJ who shall issue the hearing decision.

These final rules augment this process by authorizing attorney advisors to make fully favorable decisions in claims for disability benefits when there is no need for a hearing. No provision of the Act requires the Commissioner to utilize an ALJ when issuing a decision, nor does the APA require an agency to hold an ALJ hearing when there are no material facts in dispute, and the agency has decided that it is appropriate to issue a fully favorable decision with respect to a specific claim. The Act only requires that the Commissioner provide an individual with the opportunity for a hearing when the individual makes the requisite showing that his or her rights may be prejudiced by any decision that the Commissioner has rendered. That process is not being changed; the final rules explicitly preserve the individual's right to a hearing which will be conducted by an ALJ if the individual is dissatisfied with the decision made by the attorney advisor. Under SSA's regulations as amended by these final rules, either an attorney advisor or an ALJ may issue a fully favorable decision without a hearing in a claim for disability benefits, but if a hearing is to be held, the ALJ will conduct that hearing and issue a decision. This process is fully in accord with the Act and in no way violates the APA.

Comment: One commenter stated the view that the proposed rule violated the settlement agreement between the parties in the 1979 case, *Bono, et al.* v. *United States of America Social Security Administration, et al.*, Civil Action No. 77–0819–CV–W–4 (W.D. Mo.), regarding the rotational assignment of cases to ALJs. Another commenter, however, expressed the opinion that the proposed rule did not violate the *Bono* settlement agreement.

Response: We disagree that these final rules violate the settlement agreement in *Bono*. Without conceding that any particular aspect of the *Bono* settlement is applicable here, under the *Bono* settlement agreement, OHA reserved the right to modify or change the agreed-upon policies after appropriate consultation with the ALJs. The *Bono* agreement also specified that the Agency could consider the number of cases pending before an ALJ in determining the extent to which the rotational assignment of cases to an ALJ immediately upon their receipt in the hearing office was practicable. Under our existing procedures, cases remain on the master docket of the hearing office until several prehearing procedures have been completed. The prehearing procedures we are adopting in these final rules represent further modifications to our procedures undertaken and proposed with appropriate consultation with our ALJs.

Comment: Two of the commenters thought the proposed rule would violate a claimant's right to due process and equal protection under the Constitution. However, several other commenters stated that the proposed rule protected a claimant's right to due process under the Constitution.

Response: We do not agree that these rules violate a claimant's right to due process or equal protection under the Constitution in any way. These final rules do not impair or interfere with a claimant's right to a hearing before an ALJ. Rather, the claimant's right to a hearing conducted by an ALJ is explicitly preserved if the individual is dissatisfied with the decision made by an attorney advisor. The preservation of the claimant's right to an ALJ hearing fully comports with due process and equal protection under the Constitution.

Comment: Some of the commenters stated that the proposed rule was impractical and would not work because the effect of the rule would be to divert needed resources away from ALJs.

Response: Our intent is to identify those cases meeting the statutory definition of disability as early in the administrative review process as possible. By promptly identifying these cases—preferably before a hearing is held—SSA can avoid the costs, in terms of staff resources and time, of scheduling and holding unnecessary hearings.

Some of the procedures we are implementing under these rules are based on prehearing conference and screening procedures we fully tested based on existing regulatory authority during a pilot study completed in 1993. The results of that study, which collected data from more than 40,000 cases, showed that hearing offices could significantly reduce average case processing time by more effectively identifying and processing claims in which a hearing decision could be issued ''on-the-record'' under our current regulations (i.e., without holding an oral hearing).

The data analysis also showed that, in addition to avoiding unnecessary hearings, the procedures tested did not increase the time needed to process claims that required a hearing. The results of the pilot study also demonstrated that the prehearing conference and screening procedures did not lower hearing office productivity. Further, we found that the considerable savings realized in ALJ and staff time by avoiding unnecessary hearings more than offset the time spent in prehearing analysis and development.

Although under these final rules some attorney advisors may draft fewer hearing decisions in cases in which a hearing before an ALJ is held, and provide less professional assistance to ALJs, there are a number of initiatives already underway that are designed to provide hearing offices with additional case preparation and decision writing support during the course of this initiative. In addition, not all attorney advisors assigned to hearing offices will be authorized to conduct prehearing proceedings and issue fully favorable decisions in appropriate cases under the

authority contained in these final rules. Many attorney advisors, as well as our paralegal specialists, will be available to provide ALJs with research and decision drafting support.

Comment: As an alternative to authorizing attorney advisors to conduct certain prehearing proceedings and issue wholly favorable decisions in appropriate cases, several commenters suggested that the proposed rule should be modified to allow OHA attorney advisors to conduct prehearing proceedings under the direction of an ALJ and make recommended decisions that the ALJ could approve or disapprove. One commenter suggested several specific modifications to the text of the proposed rule to address this issue.

Response: We have not adopted this comment. Under current procedures conducted under existing regulatory authority, ALJs may authorize attorney advisors to review cases pending before the ALJ before a hearing is scheduled in order to conduct certain prehearing proceedings and recommend wholly favorable decisions or the scheduling of a hearing, as appropriate. Our experience under the 1993 pilot study was that ALJs agreed with and accepted the recommendations made by attorney advisors with very few exceptions. The procedures we are implementing under these final rules will allow us to process cases more efficiently by authorizing the attorney advisors, during the period in which these rules will be effective, to issue decisions which are wholly favorable to the claimant and any other party to the hearing in appropriate cases, obviating the need for duplicative review by an ALJ. These final rules take full advantage of the experience and expertise of the attorney advisor and will allow ALJs to better focus upon the complex cases that require their skills.

Comment: One commenter suggested that the proposed rule be modified to authorize other individuals, such as adjudicators who make disability determinations for us in the State agencies at the initial and reconsideration steps of the administrative review process, to make revised determinations on the same basis as these final rules authorize attorney advisors to make decisions.

Response: We have not adopted this comment. The provisions we are establishing in these final rules complement, but do not supersede, the provisions of §§ 404.941 and 416.1441 of our regulations. These provisions allow us to refer a case after a hearing is requested, but before it is held, to the component that issued the determination being reviewed (including a State agency) so that it may conduct a prehearing case review to determine if a wholly or partially favorable revised determination should be made. The conditions for conducting prehearing case reviews are essentially identical to those under which attorney advisors may conduct prehearing proceedings under these final rules. We would not expect, however, that a case would be subject to both prehearing proceedings by an attorney advisor and a prehearing case review by the component that issued the determination being reviewed. The establishment of temporary procedures authorizing attorney advisors to conduct such proceedings does not limit our authority to refer cases for a prehearing case review under §§ 404.941 and 416.1441.

Furthermore, on June 9, 1995, we published an NPRM proposing to establish the authority to test implementation of the position of an adjudication officer who, under the disability redesign plan, would be the focal point for all prehearing activities when a request for hearing before an ALJ is filed (60 FR 30482). Under the tests proposed in the NPRM, the adjudication officer would be authorized to take a number of actions, including issuing a wholly favorable decision when warranted by the evidence in the record. The rule as proposed for testing permits the adjudication officer to be a qualified employee of SSA or a State agency that makes disability determinations for us. Consequently, we believe that the more appropriate course of action would be to address the concerns raised by this commenter in the context of our adjudication officer rulemaking initiative.

Comment: A few commenters suggested other alternatives to the proposed rule to address the increasing number of claims pending at OHA, including providing ALJs with more support, hiring more ALJs and increasing the role of the claimant's representative in the administrative review process.

Response: As discussed above in our response to the comment concerning the practicality of the proposed rule, we are devoting appropriate, additional resources to provide staff support to the ALJs in connection with our short term initiatives to reduce the time required to process the cases awaiting a hearing.

We have no current plans to increase the number of ALJs we employ in any substantial way. However, we expect to hire enough additional ALJs so that the number on duty should, with allowances for expected attrition, increase slightly during this fiscal year (from 1,045 at the end of October 1994 to about 1,050 at the end of FY 95).

One of our short term initiatives to process cases awaiting an ALJ hearing more efficiently is to encourage claimants and representatives to submit proposed decisional language. Under that initiative, OHA currently advises claimants and representatives early in the hearing process of the opportunity to submit arguments in the form of a recommended decision.

Comment: A few commenters expressed the view that the proposed rule should be modified to provide adequate quality assurance review procedures, as an alternative to or in addition to review by the Appeals Council, as provided for in the proposed rule.

Response: No change in these final rules or in other regulations is required to allow us to subject the decisions made by attorney advisors to quality assurance review procedures, in addition to the reviews the final rules authorize the Appeals Council to conduct on its own motion. We are establishing an intensive quality assurance review program that will supplement own motion reviews by the Appeals Council in assuring the accuracy of the decisions made by the attorney advisors.

Comment: A number of commenters expressed concern that the proposed rule would encourage adjudicators to allow claims, and therefore would increase the allowance rate for cases decided at the hearing step of the administrative review process and increase program costs.

Response: The attorney advisor's functions are not designed to increase (or decrease) in a significant way the overall rates at which we allow claims for benefits when an individual requests a hearing before an ALJ. Based on our experience with the 1993 pilot study, we anticipate no significant change in overall allowance rates in claims in which a hearing has been requested. However, we will monitor the impact of these final rules on overall allowance rates and decisional accuracy and will curtail use of, or make appropriate adjustments to the attorney advisor procedures consistent with this regulatory authority, if we determine that there is evidence of any unacceptable change in the rates at which we allow claims for benefits when an individual requests a hearing before an ALJ.

Other Comments

Other comments involved suggestions for changing the rule in specific ways.

Comment: One commenter recommended that SSA should adopt procedures to ensure that the ALJ does not know if review by an attorney advisor has occurred.

Response: We have not adopted this comment. We do not believe such procedures could be devised or that they are required. ALJs are typically aware that another adjudicator has not made a wholly favorable determination or decision in a specific case. It has not been our experience that such knowledge compromises the ability of ALJs to hold hearings and decide cases in a fair, impartial manner. We believe that the attorney advisor's performance of the functions authorized by these final rules does not materially affect the ability of our ALJs to hold hearings and make decisions fairly and impartially.

Comment: One commenter suggested that part 422 of 20 C.F.R. may need to be amended to give the attorney advisors decisionmaking authority.

Response: We disagree with this comment. We do not believe that giving attorney advisors the temporary decisionmaking authority provided in new §§ 404.942 and 416.1442 of our regulations requires amendment of part 422. The applicable regulations in part 422, §§ 422.130 and 422.203, generally describe either our overall claims adjudication process (§ 422.130) or procedures followed by OHA (§ 422.203). However, § 422.201 explicitly refers to the regulations in §§ 404.929 through 404.983 of this chapter and §§ 416.1429 through 416.1483 of this chapter for ''detailed provisions related to'' the hearings process. The regulations in part 422, therefore, are intended only to describe in general terms the overall procedures followed by OHA. They are not intended to describe each provision contained in the applicable regulations of subpart J of part 404 of this chapter or subpart N of part 416 of this chapter. Consequently, we do not believe that we need to amend any provision of part 422 of this chapter to refer specifically to the provisions of these final rules.

Comment: One commenter stated that the proposed rule should be clarified to establish that attorney advisors would be able to make fully favorable decisions in claims involving drug addiction and alcoholism where the claimant agrees that drug addiction and/or alcoholism is a contributing factor material to the finding of disability.

Response: The final rules give attorney advisors authority to make decisions which are wholly favorable to the claimant and all other parties in cases in which a claimant has filed a claim for benefits based on disability under title II and/or title XVI. For the purposes of new §§ 404.942 and 416.1442, a ''wholly favorable'' decision is intended to have the same definition as it is under the current regulations that authorize ALJs to make such a decision, §§ 404.948 and 416.1448. A wholly favorable decision is a decision that makes a finding in favor of the claimant and all the parties on every issue. Criteria for determining if any particular decision is wholly favorable would not be appropriately included in §§ 404.942 and 416.1442. However, we expect that this issue will be addressed in the instructions we plan to issue to implement these final rules.

Comment: Two commenters suggested extending the provisions of the proposed rule to include other categories of claims, including claims arising under the Old Age and Survivors program under title II of the Act and claims adjudicated by OHA on behalf of the Health Care Financing Administration under Parts A and B of the Medicare program under title XVIII of the Act.

Response: The overwhelming majority of cases pending at OHA involve claims for benefits based on disability. For the purposes of this short term initiative, we decided that it would be best to focus these final rules on increasing the efficiency with which we can process the largest group of pending cases. Cases involving other types of claims, however, will benefit from the general increase in efficiency at OHA resulting from implementation of these rules.

Comment: One comment expressed the view that §§ 404.957 and 416.1457 of subparts J and N of parts 404 and 416 of our regulations should be amended to specify that a claimant's agreement to postpone a hearing will constitute good cause for a failure to appear at a scheduled hearing.

Response: This comment assumes that a case will have been assigned to an ALJ before an attorney advisor conducts prehearing proceedings under the authority contained in these rules. As discussed above, however, that is not our intent. The prehearing proceedings conducted under these provisions will not delay the scheduling of a hearing because those proceedings will be conducted before the case would be scheduled for a hearing, considering the number of cases awaiting hearings and our general practice of scheduling hearings according to the request for hearing date. The provisions concerning claimant agreement to delay the hearing would apply if the prehearing proceedings can not be completed before the case is ready to be scheduled for a hearing.

Comment: Two commenters also recommended that §§ 404.957 and 416.1457 of our regulations be revised to clarify that an ALJ may dismiss a request for hearing when an attorney advisor issues a wholly favorable decision under §§ 404.942 or 416.1442.

Response: An ALJ's authority to dismiss a request for hearing under the circumstances set forth under §§ 404.942 and 416.1442 is sufficiently well established by the provisions of these final rules. For many years, ALJs have exercised the authority to dismiss requests for hearing when revised determinations are made under the prehearing case review regulations found at §§ 404.941 and 416.1441, even though such authority is not expressly set forth in the provisions of §§ 404.957 and 416.1457. The same principles apply with respect to the similar, but temporary, provisions being established in these final rules.

Comment: One commenter suggested that the proposed rule should be clarified to state whether the ALJ's dismissal of the request for hearing is required or only permitted after the attorney advisor issues a decision, and no party requests that the hearing continue.

Response: We have not adopted this comment. An ALJ is required to dismiss a hearing request when the attorney advisor issues a wholly favorable decision and no party makes a written request to proceed with the hearing within 30 days of the date the notice of the decision of the attorney advisor is mailed. Under these rules, the attorney advisor's notice of decision will advise the claimant that the ALJ ''will'' dismiss the request for hearing under those circumstances.

Comment: Several commenters also suggested that the proposed rule should be amended to provide that issuance of a wholly favorable decision by an attorney advisor would result in immediate dismissal of the request for a hearing.

Response: We have not adopted this comment. For the purposes of this temporary procedure, we believe it is more appropriate to make dismissal of the request for hearing contingent on the failure of any party to request to proceed with the hearing within 30 days after the date the notice of the attorney advisor's decision is mailed. That requirement clearly establishes that our intent in these temporary provisions is to expedite the processing of cases without infringing on a claimant's right to a hearing before an ALJ.

Comment: Several comments stated that the criteria in the proposed rule under which attorney advisors in OHA

could conduct prehearing proceedings were too broad. One commenter suggested that the criteria in the proposed rule under which attorney advisors could conduct prehearing proceedings if new and material evidence was submitted was vague and should be clarified.

Response: We have not adopted these comments. Restricting the criteria under which an attorney advisor can conduct prehearing proceedings would, in our judgment, unnecessarily preclude the most prompt action possible on some cases. Moreover, in our experience, there has been no confusion over nor excessive use of the regulations found at §§ 404.941 and 416.1441, which allow prehearing case reviews under conditions substantially the same as those set forth in new §§ 404.942 and 416.1442.

Comment: One commenter suggested changes to the proposed rules to clarify in several places in the regulations that attorney advisors may only issue fully favorable decisions.

Response: We believe the regulations clearly limit the attorney advisors to making only wholly favorable decisions, and do not require further clarification, as suggested by the commenter.

Comment: Two commenters suggested that the proposed rule be revised to clarify whether the attorney advisor can request vocational evidence, in addition to medical evidence, as part of the prehearing proceedings.

Response: The final rules state that the attorney advisor may ''[r]equest additional evidence that may be relevant to the claim, including medical evidence. * * *'' That language is sufficiently broad to allow the attorney advisor to request vocational evidence in appropriate cases. It should be noted, however, that the attorney advisor's ability to request additional evidence must be exercised in accordance with the purpose of §§ 404.942 and 416.1442 to facilitate the identification and prompt processing of cases in which a wholly favorable decision may be made without the need for an ALJ hearing.

Regulatory Procedures

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, the rule is not subject to OMB review.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and disability insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: June 26, 1995.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended]

1. The authority citation for subpart J of part 404 is revised to read as follows:

Authority: Secs. 201(j), 205(a), (b), and (d)–(h), 221(d), 225 and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 405(a), (b), and (d)–(h), 421(d), 425 and 902(a)(5)); 31 U.S.C. 3720A.

2. New § 404.942 is added under the undesignated center heading ''Hearing Before an Administrative Law Judge'' to read as follows:

§ 404.942 Prehearing proceedings and decisions by attorney advisors.

(a) *General.* After a hearing is requested but before it is held, an attorney advisor in our Office of Hearings and Appeals may conduct prehearing proceedings as set out in paragraph (c) of this section. If upon the completion of these proceedings, a decision that is wholly favorable to you and all other parties may be made, an attorney advisor, instead of an administrative law judge, may issue such a decision. The conduct of the prehearing proceedings by the attorney advisor will not delay the scheduling of a hearing. If the prehearing proceedings are not completed before the date of the hearing, the case will be sent to the administrative law judge unless a wholly favorable decision is in process or you and all other parties to the hearing agree in writing to delay the hearing until the proceedings are completed.

(b) *When prehearing proceedings may be conducted by an attorney advisor.* An attorney advisor may conduct prehearing proceedings if you have filed a claim for benefits based on disability and—

(1) New and material evidence is submitted;

(2) There is an indication that additional evidence is available;

(3) There is a change in the law or regulations; or

(4) There is an error in the file or some other indication that a wholly favorable decision may be issued.

(c) *Nature of the prehearing proceedings that may be conducted by an attorney advisor.* As part of the prehearing proceedings, the attorney advisor, in addition to reviewing the existing record, may—

(1) Request additional evidence that may be relevant to the claim, including medical evidence; and

(2) If necessary to clarify the record for the purpose of determining if a wholly favorable decision is warranted, schedule a conference with the parties.

(d) *Notice of a decision by an attorney advisor.* If the attorney advisor issues a wholly favorable decision under this section, we shall mail a written notice of the decision to all parties at their last known address. We shall state the basis for the decision and advise all parties that an administrative law judge will dismiss the hearing request unless a party requests that the hearing proceed. A request to proceed with the hearing must be made in writing within 30 days after the date the notice of the decision of the attorney advisor is mailed.

(e) *Effect of actions under this section.* If under this section, an administrative law judge dismisses a request for a hearing, the dismissal is binding in accordance with § 404.959 unless it is vacated by an administrative law judge or the Appeals Council pursuant to § 404.960. A decision made by an attorney advisor under this section is binding unless—

(1) A party files a request to proceed with the hearing pursuant to paragraph (d) of this section and an administrative law judge makes a decision;

(2) The Appeals Council reviews the decision on its own motion pursuant to § 404.969 as explained in paragraph (f)(3) of this section; or

(3) The decision of the attorney advisor is revised under the procedures explained in § 404.987.

(f) *Ancillary provisions.* For the purposes of the procedures authorized by this section, the regulations of Part 404 shall apply to—

(1) Authorize an attorney advisor to exercise the functions performed by an administrative law judge under §§ 404.1520a and 404.1546;

(2) Define the term ''decision'' to include a decision made by an attorney advisor, as well as the decisions identified in § 404.901; and

(3) Make the decision of an attorney advisor subject to review by the Appeals Council under § 404.969 if an administrative law judge dismisses the request for a hearing following issuance of the decision, and the Appeals Council decides to review the decision of the attorney advisor anytime within 60 days after the date of the dismissal.

(g) *Sunset provision.* The provisions of this section will no longer be effective on June 30, 1997 unless they are extended by the Commissioner of Social Security by publication of a final rule in the **Federal Register**.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—[Amended]

1. The authority citation for subpart N of part 416 is revised to read as follows:

Authority: Sec. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

2. New § 416.1442 is added under the undesignated center heading ''Hearing Before an Administrative Law Judge'' to read as follows:

§ 416.1442 Prehearing proceedings and decisions by attorney advisors.

(a) *General.* After a hearing is requested but before it is held, an attorney advisor in our Office of Hearings and Appeals may conduct prehearing proceedings as set out in paragraph (c) of this section. If upon the completion of these proceedings, a decision that is wholly favorable to you and all other parties may be made, an attorney advisor, instead of an administrative law judge, may issue such a decision. The conduct of the prehearing proceedings by the attorney advisor will not delay the scheduling of a hearing. If the prehearing proceedings are not completed before the date of the hearing, the case will be sent to the administrative law judge unless a wholly favorable decision is in process or you and all other parties to the hearing agree in writing to delay the hearing until the proceedings are completed.

(b) *When prehearing proceedings may be conducted by an attorney advisor.* An attorney advisor may conduct prehearing proceedings if you have filed a claim for SSI benefits based on disability and—

(1) New and material evidence is submitted;

(2) There is an indication that additional evidence is available;

(3) There is a change in the law or regulations; or

(4) There is an error in the file or some other indication that a wholly favorable decision may be issued.

(c) *Nature of the prehearing proceedings that may be conducted by an attorney advisor.* As part of the prehearing proceedings, the attorney advisor, in addition to reviewing the existing record, may—

(1) Request additional evidence that may be relevant to the claim, including medical evidence; and

(2) If necessary to clarify the record for the purpose of determining if a wholly favorable decision is warranted, schedule a conference with the parties.

(d) *Notice of a decision by an attorney advisor.* If the attorney advisor issues a wholly favorable decision under this section, we shall mail a written notice of the decision to all parties at their last known address. We shall state the basis for the decision and advise all parties that an administrative law judge will dismiss the hearing request unless a party requests that the hearing proceed. A request to proceed with the hearing must be made in writing within 30 days after the date the notice of the decision of the attorney advisor is mailed.

(e) *Effect of actions under this section.* If under this section, an administrative law judge dismisses a request for a hearing, the dismissal is binding in accordance with § 416.1459 unless it is vacated by an administrative law judge or the Appeals Council pursuant to § 416.1460. A decision made by an attorney advisor under this section is binding unless—

(1) A party files a request to proceed with the hearing pursuant to paragraph (d) of this section and an administrative law judge makes a decision;

(2) The Appeals Council reviews the decision on its own motion pursuant to § 416.1469 as explained in paragraph (f)(3) of this section; or

(3) The decision of the attorney advisor is revised under the procedures explained in § 416.1487.

(f) *Ancillary provisions.* For the purposes of the procedures authorized by this section, the regulations of part 416 shall apply to—

(1) Authorize an attorney advisor to exercise the functions performed by an administrative law judge under §§ 416.920a, 416.924d(b), and 416.946;

(2) Define the term ''decision'' to include a decision made by an attorney advisor, as well as the decisions identified in § 416.1401; and

(3) Make the decision of an attorney advisor subject to review by the Appeals Council under § 416.1469 if an administrative law judge dismisses the request for a hearing following issuance of the decision, and the Appeals Council decides to review the decision of the attorney advisor anytime within 60 days after the date of the dismissal.

(g) *Sunset provision.* The provisions of this section will no longer be effective on June 30, 1997 unless they are extended by the Commissioner of Social Security by publication of a final rule in the **Federal Register**.

[FR Doc. 95–16138 Filed 6–29–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Wage and Hour Division

29 CFR Part 508

RIN 1205–AA88 and RIN 1215–AA68

Attestations by Employers for Off-Campus Work Authorization for Foreign Students (F–1 Nonimmigrants)

AGENCIES: Employment and Training Administration, Labor; and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Joint interim final rule.

SUMMARY: The Department of Labor (DOL) amends regulations relating to attestations by employers seeking to use nonimmigrant foreign (F–1) students in off-campus work. DOL continues to review comments submitted by the public on the interim final rule and expects to publish a final rule shortly. However, existing attestations expire at the close of June 1995. For that reason, this rule extends the period of

applicability of attestations for one month.

EFFECTIVE DATE: June 30, 1995.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart J, and 29 CFR part 508, subpart J, contact Ms. Flora T. Richardson, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–535–0174 (this is not a toll-free number).

On 20 CFR part 655, subpart K, and 29 CFR part 508, subpart K, contact Tom Shierling, Chief, Farm Labor Programs, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–523–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Immigration Act of 1990 (IMMACT) sec. 221 and Immigration and Nationality Act secs. 101(a)(15)(F) and 214 create a pilot program, of limited duration, allowing a nonimmigrant foreign student admitted on F–1 visas to work off-campus if: (1) he/she has completed one academic year as such a nonimmigrant and is maintaining good academic standing at the institution; (2) he/she will not be employed off-campus for more than 20 hours per week during the academic term (but may be employed full-time during vacation periods and between terms); and (3) the employer provides an attestation to the Department of Labor (DOL) and to the educational institution that it unsuccessfully recruited for the position for at least 60 days and will pay the higher of the actual wage at the worksite or the prevailing wage for the occupation in the area of employment. The employer submits such attestations to DOL and the educational institution for foreign students to receive work authorization, if otherwise qualified. The attestation process is administered by the Employment and Training Administration. Complaints and investigations regarding violations of employer attestations are handled by the Wage and Hour Division, Employment Standards Administration. If DOL determines an employee made a materially false attestation or failed to pay wages in accordance with an attestation, the employer, after notice and opportunity for a hearing, may be disqualified from employing F–1 students under the program.

An interim final rule, requesting comments was published November 6, 1991. 56 FR 56860. The interim final rule provided that the employer's attestation may remain in effect, unless withdrawn or invalidated, through no later than September 30, 1994, the original statutory termination date for the pilot. Public Law 103–416 extended the program. On December 15, 1994, DOL extended existing attestations through June 30, 1995. Analysis of the comments is ongoing. The rule published today extends attestations through July 31, 1995. A final rule is expected to be published shortly. Should that not occur, the interim final rule will be extended again.

Absent today's amendment, all previously valid attestations would expire at the close of June 30, 1995, and no new attestations could be filed. Without the amendment, F–1 students would not have work authorization under this program. New attestations filed after the effective date of today's rule also are valid through July 31, 1995, unless withdrawn or invalidated. Today's rule alleviates hardships for covered students and employers, and the limited extension gives DOL additional opportunity to complete analysis of comments on the interim final rule. For these reasons, DOL for good cause finds a proposed rule is impracticable and contrary to the public interest (5 U.S.C. 553(b)(B)); and finds good cause to make the rule effective immediately (5 U.S.C. 553(d)(3)). The rule is not significant under E. O. 12866. The rule was not preceded by a proposed rule and, thus, is not covered by the Regulatory Flexibility Act. When the interim final rule was published, however, DOL notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b), that the rule did not have a significant economic impact on a substantial number of small entities. The program is not in the *Catalog of Federal Domestic Assistance.*

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Forest and forest products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

20 CFR Part 508

Administrative practice and procedure, Aliens, Employment, Enforcement, Immigration, Labor, Penalties, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

Text of Joint Interim Final Rule: The text of the joint interim final rule appears below:

1. Section ____.900(b)(2)(i) of title is amended by removing the date ''June 30, 1995'' and adding in lieu thereof the date ''July 31, 1995''.

2. Section ____.900(d) is amended by removing the date ''June 30, 1995'' and adding in lieu thereof the date ''July 31, 1995''.

3. Section ____.900 is amended by revising paragraph (e), to read as follows:

§ ____.900 Purpose, procedure and applicability of subparts J and K of this part.

* * * * *

(e) *Revalidation of employer attestations in effect on June 30, 1995.* Any employer's attestation which was valid on June 30, 1995, is revalidated effective on June 30, 1995, and shall remain valid through July 31, 1995, unless withdrawn or invalidated.

4. Section ____.910(b)(2)(i) is amended by removing the phrase ''through June 30, 1995'' and adding in lieu thereof the phrase ''through July 31, 1995''.

5. Section ____.910(e) is amended by removing from the first sentence the phrase ''expires on June 30, 1995'' and adding in lieu thereof the phrase ''expires on September 30, 1996); by removing from the first sentence the phrase ''after that date'' and adding in lieu thereof the phrase ''after July 31, 1995''; and by removing from the penultimate sentence the phrase ''prior to June 30, 1995'' and adding in lieu thereof the phrase ''prior to July 31, 1995''.

6. Section ____.940(d)(1)(i)(B) is amended by removing the date ''June 30, 1995'' and adding in lieu thereof the date ''July 31, 1995''.

7. Section ____.940(h)(1) is amended by removing the date ''June 30, 1995'' and adding in lieu thereof the date ''July 31, 1995''.

8. Section ____.940(h)(3) is amended by removing the date ''June 30, 1995'' and adding in lieu thereof the date ''July 31, 1995''.

Adoption of Joint Interim Final Rule

The agency-specific adoption of the Joint Interim Final Rule, which appears at the end of the common preamble, appears below:

TITLE 20—EMPLOYEES' BENEFITS

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

1. Part 655 of chapter V of title 20, Code of Federal Regulations, is amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

a. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H) (i) and (ii), 1182 (m) and (n), 1184, 1188, and 1288(c); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); and 8 CFR 214.2(h)(4)(i).

Section 665.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.)*

Subparts H and I issued under 8 U.S.C. 1101(a)(15) (H) (i)(b), 1182(n), and 1184; and 29 U.S.C. 49 *et seq.*

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

b. Part 655 is amended as set forth in the Joint Interim Final Rule, which appears at the end of the end of the common preamble.

TITLE 29—LABOR

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

2. Part 508 of chapter V of title 29, Code of Federal Regulations, is amended as follows:

PART 508—ATTESTATIONS FILED BY EMPLOYERS UTILIZING F–1 STUDENTS FOR OFF-CAMPUS WORK

a. The authority citation for part 508 continues to read as follows:

Authority: 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

b. Part 508 is amended as set forth in the Joint Interim Final Rule, which appears at the end of the end of the common preamble.

Signed at Washington, DC, this 27th day of June, 1995.

Raymond Uhalde,

Deputy Assistant Secretary for Employment and Training.

Maria Echaveste,

Administrator, Wage and Hour Division, Employment Standards Administration.

[FR Doc. 95–16133 Filed 6–27–95; 12:52 pm]

BILLING CODE 4510–30–M

BILLING CODE 4510–27–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 91F–0339]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2-bromo-2-nitro-1,3-propanediol as an antimicrobial/preservative in fillers, pigment slurries, starch sizing solutions, and latex coatings used in the manufacture of paper and paperboard articles intended to contact food. This action responds to a food additive petition filed by Betz Laboratories, Inc.

DATES: Effective June 30, 1995; written objections and requests for a hearing by August 29, 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: Richard H. White, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3094.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 19, 1991 (56 FR 47478), FDA announced that a food additive petition (FAP 1B4279) had been filed by Betz Laboratories, Inc., 4636 Somerton Rd., Trevose, PA 19053. The petition proposed to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of 2-bromo-2-nitro-1,3-propanediol as an antimicrobial/preservative in fillers, binders, pigment slurries, sizings, and coatings used in the manufacture of paper and paperboard articles intended for food-contact use. The petitioner later limited and clarified the requested use of the additive to provide for its safe use as an antimicrobial/preservative in fillers, pigment slurries, starch sizing solutions, and latex coatings used as components of paper and paperboard in contact with aqueous and fatty foods.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the additive is safe and effective for the proposed use and that 21 CFR 176.170 of the food additive regulations 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 176

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 of the Center for Food Safety and Applied Nutrition, 21 CFR Part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 379e).

2. Section 176.170 is amended in the table in paragraph (a)(5) by alphabetically adding a new entry under the headings ''List of Substances'' and ''Limitations'' to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of Substances	Limitations
* * * * * * *	
2-Bromo-2-nitro-1,3-propanediol (CAS Reg. No. 52–51–7)	For use only as an antimicrobial/preservative in fillers, pigment slurries, starch sizing solutions, and latex coatings at levels not to exceed 0.01 percent by weight of those components.
* * * * * * *	

* * * * *

Dated: June 21, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–16092 Filed 6–29–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 510

New Animal Drugs; Change of Sponsor Name and Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name and address from DDI Pharmaceuticals, Inc., to OXIS International, Inc.

EFFECTIVE DATE: June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: DDI Pharmaceuticals, Inc., 518 Logue Ave., Mountain View, CA 94043, has informed FDA of a change of sponsor name and address to OXIS International, Inc., 6040 N. Cutter Circle, suite 317, Portland, OR 97217–3935. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name and address.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, 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 Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for ''DDI Pharmaceuticals, Inc.,'' and by alphabetically adding a new entry for ''OXIS International, Inc.,'' and in the table in paragraph (c)(2) in the entry ''024991'' by revising the sponsor name and address to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
OXIS International, Inc., 6040 N. Cutter Circle, suite 317, Portland, OR 97217–3935.	024991
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
024991	OXIS International, Inc., 6040 N. Cutter Circle, suite 317, Portland, OR 97217–3935
* * * * *	

Dated: June 23, 1995.

Andrew J. Beaulieau,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 95–16093 Filed 6–29–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 92

[Docket No. FR–3840–I–02]

RIN 2501–AB95

Extension of HOME Investment Partnerships Program

AGENCY: Office of the Secretary.

ACTION: Notice of Extension of HOME Investment Partnerships Program.

SUMMARY: This document extends for one year the period that the interim rule for the HOME Investment Partnerships Program will be in effect from June 30, 1995 to June 30, 1996.

EFFECTIVE DATE: Effective on June 30, 1995 the effectiveness of the amendments to 24 CFR Part 92 published on April 19, 1994 at 59 FR 18626 and August 26, 1995 at 59 FR 44258 is extended to June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing Programs, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–2470, TDD (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 92.5 of 24 CFR was added to implement a Department-wide policy for the expiration of interim rules within a set period of time if they are not issued in final form before the end of the period. The rule provides that the expiration period may be extended by notice published in the **Federal Register**. Because the expiration date for the HOME interim rule is currently June 30, 1995, and a final rule is not expected before that date, this notice extends the expiration date for an additional year. A conforming change is also being made, in a separate publication, to § 92.5.

Accordingly, the time period during which the interim rule for the HOME Investment Partnerships Program at 24 CFR part 92 will be in effect is extended for an additional year to June 30, 1996. If a final rule is published on or before June 30, 1996, the interim rule will continue in effect until the published final rule's effective date.

Dated: June 26, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–16127 Filed 6–29–95; 8:45 am]

BILLING CODE 4210–32–P

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 203

[Docket No. FR–3766–F–01]

RIN 2502–AG37

Electronic Payment of Periodic Mortgage Insurance Premiums; Final Rule

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

ACTION: Final rule.

SUMMARY: This final rule amends HUD's Single Family Mortgage Insurance regulations. This rule authorizes the Federal Housing Administration (FHA) Commissioner to require that periodic mortgage insurance premiums (MIP) be remitted electronically. The purpose of this rule is to reduce the servicing costs to mortgage lenders and to enhance HUD operations.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Anne L. Baird-Bridges, Acting Director, Single Family Insurance Operations Division, Room 2246, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2438, or (202) 708–4594 (TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

In 1985, the Department of Housing and Urban Development (HUD) implemented the Automated Clearing House (ACH) program, with voluntary participation by mortgagees, for electronic payment of up-front mortgage insurance premiums (MIP) for single family mortgages that are obligations of the Mutual Mortgage Insurance Fund. In 1989, HUD implemented the ACH program on a voluntary basis for electronic payment of periodic (monthly) MIP for single family insured mortgages. In these single family mortgages, mortgagees collected mortgage insurance premiums on a monthly basis from the mortgagors and promptly remitted them to HUD as required by section 530 of the National Housing Act. These premiums are sometimes referred to as section 530 premiums to distinguish them from the risk-based premium segment that was adopted later in July 1991, although regulations under section 530 also apply to that segment. In 1992, HUD made the ACH program available on a voluntary basis to the risk-based premium segment of periodic MIP.

On June 9, 1992, HUD published a proposed rule in the **Federal Register** (57 FR 24424) that would amend the Title II regulations to permit the Federal Housing Administration (FHA) Commissioner to require that all up-front premium payments be made electronically through ACH. HUD received five comments in response to that proposed rule. Two comments were from automated clearing house associations, and expressed general approval of HUD's proposal. Two comments were from national trade associations; both were favorable to the proposal, although one expressed a number of technical operational concerns. The fifth comment, from a small lender, expressed a similar concern to one raised by one of the trade associations, namely the financial impact on small lenders.

On March 8, 1993, HUD published a final rule in the **Federal Register** (58 FR 12901) that was unchanged from the proposed rule. However, due to the concerns communicated in the comments, HUD allowed a one-year grace period for institutions making 300 or fewer new FHA single family loans per year.

II. The Method of Electronic Payment

HUD's policy prior to this final rule allowed mortgage lenders to remit payment of periodic (monthly) mortgage insurance premiums (MIP) either by mailing checks and remittance forms to the NationsBank lockbox contractor or electronically through the Automated Clearing House (ACH) program at Mellon Bank. This final rule will require the electronic payment of all periodic MIP.

In the ACH program, periodic premium collections (also referred to as section 530 premiums and risk-based premiums) are processed from mortgagees and confirmations are remitted back to the mortgagees electronically, using remote terminals or microcomputers with modems in lieu of sending checks with HUD forms. Through ACH, the mortgagee's terminal or microcomputer operator keys in the transaction data, which is transmitted to Mellon Bank.

Each day at 8 p.m. EST, the Mellon Telecash System originates an ACH file of debit transactions based on the data keyed by the mortgagee. When the debit transactions have been processed, the ACH will transmit the periodic premium data to HUD's premium collection system. Through this ACH process, the debit amount is drawn from the designated lender's bank account

electronically the next day, or can be ''warehoused'' and drawn on the lender's bank account on a future date. The corresponding credit entry will update HUD's account located at Mellon Bank. If the lender's bank is unable to receive an ACH entry, a paper Depository Transfer Check (DTC) is used.

The processing of late charges will not change through the ACH process. Late charges will still be assessed if a payment is not received by the 10th of the month. Interest will still be due if the payment is made more than 20 days after the 10th of the month. In the ACH program, the late charge and interest amount can be entered on the input screen.

Under this final rule, periodic MIP for all mortgages insured under the General Insurance Fund, the Special Insurance Fund, and the periodic risk-based segment of MIP for more recent mortgages insured under the Mutual Mortgage Insurance Fund will be collected electronically. Excluded under periodic risk-based MIP are condominium GPMs, GEMs, and ARMs which are not insured under section 203(b) of the National Housing Act. Also excluded are any section 203(b) mortgages insured pursuant to sections 233(e) (older declining areas), 238(c) (military impacted areas), 247 (Indian reservations), and 248 (Hawaiian home lands), since those mortgages are not obligations of the Mutual Mortgage Insurance Fund. HUD will transmit specific administrative instructions implementing this rule to all HUD-approved mortgagees before the rule's effective date.

III. Benefits of Electronic Payment

The method of electronic payment provides many benefits to the mortgage lenders that will reduce their servicing costs and enhance operations. The advantages of electronic payment are:

(1) The electronic transfer of debits and credits in the ACH program can increase the lender's control of payment initiation and funds availability.

(2) Banking costs are reduced. Electronic transfers costs less than paper check and wire transfers.

(3) Accounting reconciliation is reduced. Payments are computerized and cash application is more automated than with manual systems.

(4) Built-in edits can reduce data errors created by manual recording.

(5) The chance of lost or late mail is eliminated.

Although mortgage lender participation in the ACH transfer system for collecting periodic MIP has been minimal, electronic payment provides reduced servicing costs and enhanced operations to lenders as well as HUD.

IV. This Final Rule

This final rule amends the Single Family Mortgage Insurance regulations to authorize the FHA Commissioner to require the electronic payment of periodic MIP. In addition, the rule will correct an inadvertent omission of the language that permits HUD to require electronic payment of up-front MIP. The final rule for the electronic payment of up-front mortgage insurance premiums, published in the **Federal Register** on March 8, 1993 (58 FR 12901), inadvertently deleted a reference in § 203.259a to new § 203.285 regarding risk-based MIP for 15-year mortgages. HUD had added that reference in an interim rule published in the **Federal Register** on October 14, 1992 (57 FR 46980). When HUD issued the October 1992 interim rule in final form on July 30, 1993 (58 FR 41003), it added one reference to § 203.285, but left out the sentence about electronic MIP. A corrective rule issued on March 24, 1994 (59 FR 13882) added a second reference to § 203.285, but that correction still left out the sentence on electronic MIP.

V. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking (24 CFR part 10). However, part 10 provides for exceptions from that general rule when HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. Because of its experience in promulgating the amendment to the Title II regulations for electronic payment of insurance premiums through ACH and the voluntary participation in the ACH program by some lenders in the electronic payment of periodic MIP, as described in the ''Background'' section of this preamble, HUD finds that prior public procedure is unnecessary.

VI. Regulatory Reform

Consistent with Executive Order 12866 and President Clinton's memorandum of March 4, 1995 to all Federal departments and agencies on the subject of Regulatory Reinvention, HUD is reviewing all its regulations to determine whether they can be eliminated, streamlined, or consolidated with other regulations. As part of this review, HUD has reviewed this rule and determined that it furthers the President's objectives on regulatory reform. With this rule, HUD more closely conforms its practices with those in the private sector, by adopting an advanced technological process that relieves a paperwork and financial burden on lenders.

VI. Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule implements a program that will enhance operations and be cost beneficial for all participating lenders.

Environmental Impact Statement

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality, and 24 CFR 50.20(k) of the HUD regulations, this rule is categorically excluded from the requirements of the National Environmental Policy Act. The rule relates solely to internal administrative procedures, the content of which do not involve a development decision or affect the physical condition of project areas or building sites, but only relate to the performance of accounting, auditing, and fiscal functions.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Specifically, the requirements of this rule are directed to lenders, and do not impinge upon the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. No

significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as item number 1415 in HUD's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23370) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, 24 CFR part 203 is amended as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b and 1715u; 42 U.S.C. 3535(d).

2. Section 203.259a is amended by adding a new sentence to the end of paragraph (b), to read as follows:

§ 203.259a Scope.

* * * * *

(b) * * * In the cases that the Commissioner deems appropriate, the Commissioner may require, by means of instructions communicated to all affected mortgages, that up-front MIP be remitted electronically.

* * * * *

3. A new § 203.269 is added to the end of the undesignated center heading ''Mortgage Insurance Premiums—Periodic Payment'', to read as follows:

§ 203.269 Method of payment of periodic MIP.

In cases that the Commissioner deems appropriate, the Commissioner may require, by means of instructions communicated to all affected mortgagees, that periodic MIP be remitted electronically.

4. Section 203.284 is amended by revising paragraph (f) to read as follows:

§ 203.284 Calculation of up-front and annual MIP on or after July 1, 1991.

* * * * *

(f) *Applicability of other sections.* The provisions of §§ 203.261, 203.264, 203.266, 203.267, 203.268(a)(1), 203.269, 203.280, and 203.282 are applicable to mortgages subject to premiums under this section.

* * * * *

5. Section 203.285 is amended by revising paragraph (c) to read as follows:

§ 203.285 Fifteen-year mortgages: Calculation of up-front and annual MIP on or after December 26, 1992.

* * * * *

(c) *Applicability of certain provisions.* The provisions of §§ 203.261, 203.266, 203.267, 203.268, 203.269, 203.280, and 203.282 are applicable to mortgages subject to premiums under this section. The provisions of paragraphs (d), (e), and (g) of § 203.284 also shall be applicable to mortgages subject to premiums under this section.

* * * * *

Dated: June 20, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–16128 Filed 6–29–95; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with additional requirements, a proposed amendment to the Arkansas regulatory program (hereinafter referred to as the ''Arkansas program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Arkansas proposed changes to its statute by adding definitions of the terms ''unanticipated event or condition'' and ''lands eligible for remining,'' deleting the authority to either regulate or not regulate surface coal mining operations affecting 2 acres or less, and revising provisions pertaining to violations and revegetation performance standards for remining permits. The amendment was intended to revise the Arkansas program to be consistent with SMCRA.

EFFECTIVE DATE: June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Timothy Dieringer, Acting Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. General background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program can be found in the November 21, 1980, **Federal Register** (45 FR 77003). Subsequent actions concerning Arkansas's program and program amendments can be found at 30 CFR 904.12 and 904.15.

II. Proposed Amendment

By letter dated August 26, 1994, Arkansas submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. AR–522). Arkansas submitted the proposed amendment at its own initiative with the intent of making its coal mining statutes consistent with SMCRA. Arkansas proposed to revise the Arkansas Surface Coal Mining and Reclamation Act of 1979 (ASCMRA) at (1) section 5, jurisdiction and powers; rules and regulations, (2) section 13, surface coal mining permits, and (3) section 15, environmental protection performance standards.

OSM published a notice in the September 29, 1994, **Federal Register** (59 FR 49616) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (administrative record No. AR–526). The public comment period ended October 31, 1994.

During its review of the amendment, OSM identified concerns with section 13(k) of ASCMRA, regarding remining permit violations, and section 15(d)(1) of ASCMRA, regarding revegetation performance standards on lands eligible for remining. OSM notified Arkansas of the concerns by letter dated November 22, 1994 (administrative record No. AR–539). Arkansas responded in a letter dated March 1, 1995, by submitting a revised amendment (administrative record No. AR–540).

In the revised amendment, Arkansas proposed to add definitions of the terms ''unanticipated event or condition'' and ''lands eligible for remining'' at sections 4(18) and 4(19) of ASCMRA.

Based upon the revisions to the proposed program amendment submitted by Arkansas, OSM reopened the public comment period in the March 17, 1995, **Federal Register** (60 FR 14399, administrative record No. AR–544). The

public comment period ended on April 3, 1995.

By letter dated April 4, 1995, Arkansas withdrew from this amendment section 15(d)(1) of ASCMRA, which was a counterpart to section 515(b)(20)(B) of SMCRA, and which set forth a variance from the liability period performance standard for revegetation on lands eligible for remining. In doing so, Arkansas indicated that it intends to insert a counterpart provision to section 515(b)(20)(B) of SMCRA in its regulations rather than in its statute at section 15(d)(1) of ASCMRA as originally proposed (administrative record No. AR–548).

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with additional requirements, that the proposed program amendment submitted by Arkansas on August 26, 1994, and as revised by it on March 1 and April 4, 1995, is no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

1. Substantive Arkansas Statute Provision That Is Substantively Identical to the Corresponding SMCRA Provision

Arkansas proposed a definition of the term ''unanticipated event or condition'' at section 4(18) of ASCMRA (to be codified at Arkansas Code Annotated (ACA) 15–58–104(17)) that is substantively identical to the definition of the same term at section 701(33) of SMCRA.

Because this proposed statutory provision is substantively identical to the corresponding SMCRA provision, the Director finds that it is no less stringent than SMCRA. The Director approves the proposed definition of the term ''unanticipated event or condition.''

2. ASCMRA 4(19), Definition of the Term ''Lands Eligible for Remining''

Arkansas proposed at section 4(19) of ASCMRA (ACA 15–58–104(18)) to define the term ''lands eligible for remining'' to mean those lands that would otherwise be eligible for expenditures under section 6 of ASCMRA (ACA 15–58–401).

Section 701(34) of SMCRA defines the term ''lands eligible for remining'' to mean those lands that would otherwise be eligible for expenditures under section 404 or 402(g)(4) of SMCRA.

Referenced section 6 of ASCMRA (ACA 15–58–401) in Arkansas' proposed definition of the term ''lands eligible for remining'' is the State counterpart provision to referenced sections 404 and 402(g)(4)(B) of SMCRA in the Federal definition. However, unlike section 404 of SMCRA, section 60 of ASCMRA (ACA 15–58–401) does not provide for an exclusion of expenditures for those lands addressed by section 411 of SMCRA. Accordingly, Arkansas' proposed definition of the term ''lands eligible for remining'' at section 4(19) of ASCMRA (ACA 15–58–104(18) is less stringent than section 404 of SMCRA.

Therefore, the Director approves but requires Arkansas to revise its definition, or otherwise modify its program, to exclude those lands addressed by section 411 of SMCRA.

3. ASCMRA 5(b)(1), Applicability of the 2-Acre Exemption

Arkansas proposed to delete the language of section 5(b)(1) of ASCMRA, which provided, in part, that ''the Commission may, by regulation, include, modify or omit permit application requirements, permit approval or denial procedures, bond requirements and environmental performance standards as it deems appropriate for surface mining operations affecting two acres or less.'' Under this authority, Arkansas previously promulgated rules at Part 772 of the Arkansas Surface Coal Mining and Reclamation Code (ASCMRC) that exempted from regulation surface mining operations affecting 2 acres or less.

As originally enacted, section 528(2) of SMCRA exempted from the requirements of SMCRA coal operations affecting 2 acres or less. However, on May 7, 1987, the President signed Pub. L. 100–34, which repealed this exemption and preempted any corresponding acreage-based exemptions included in State laws or regulations.

In accordance with the repeal of section 528(2) of SMCRA, Arkansas proposed and the Director approved the deletion of the 2-acre exemption allowance at ASCMRC Part 772 and the references to that exemption at ASCMRC 707.12, 770.6(b), 770.6(i) (a) and (c), 810.11, 815, 815.2 (b) and (c), 815.11(c), 815.15 (a) through (d), and (f) through (k), and 1000(d)(7) (August 19, 1992; 57 FR 37423, 37426–37427). Arkansas' proposed deletion of its statutory language at section 5(b)(1) of ASCMRA is consistent with its previous OSM-approved rule revisions deleting the 2-acre exemption allowance and is no less stringent that SMCRA, as amended by Pub. L. 100–34. Accordingly, the Director approves Arkansas' proposed deletion.

4. ASCMRA 13(k), Remining Permit Violations

Arkansas proposed to create new section 13(k) of ASCMRA (ACA 15–58–503(a)(3)(G)) to provide that certain violations incurred under a remining permit shall not disqualify the holder of that permit from obtaining subsequent surface coal mining permits. Specifically, proposed section 13(k) of ASCMRA requires that

> After the date of enactment of this subsection, the prohibition of subsection (c)(3)(E) shall not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining under a permit held by the person making such application. As used in this subsection, the term ''violation'' has the same meaning as such term has under subsection (c)(3)(E). The authority of this subsection and Section 15(d)(1) shall terminate on September 30, 2004.

The only difference in wording between this proposed statutory provision and the counterpart provision at section 510(e) of SMCRA is that it references section 13(c)(3)(E) of ASCMRA instead of section 510(c) of SMCRA and references section 15(d)(1) of ASCMRA instead of section 515(b)(20)(B) of SMCRA.

Referenced section 13(c)(3)(E) of ASCMRA is a counterpart to section 510(c) of SMCRA that Arkansas previously proposed and OSM approved. Arkansas withdrew from this amendment referenced section 15(d)(1) of ASCMRA, which was a counterpart to section 515(b)(20)(B) of SMCRA.

With the exception of the reference to section 15(d)(1) of ASCMRA, which does not exist, proposed section 13(k) of ASCMRA is substantively identical to and no less stringent than section 510(e) of SMCRA. Accordingly, the Director approves proposed section 13(k) of ASCMRA but requires Arkansas to delete the phrase ''and section 15(d)(1).''

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

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

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal

agencies with an actual or potential interest in the Arkansas program.

Soil Conservation Service (SCS). SCS responded on October 24, 1994, that it had no comments to make concerning the proposed amendment. SCS further stated that since the proposal deals with remining it expects no impact on Rural Abandoned Mine Program projects in Arkansas, which are administered by SCS under the abandoned mine reclamation provisions of title IV of SMCRA (administrative record No. AR–532).

The Bureau of Land Management (BLM). BLM responded on October 19, 1994 (administrative record No. AR–533). It commented that Arkansas' amendment to section 13(k) of ASCMRA tends to follow the intent of SMCRA. As discussed in finding No. 4, the Director finds, with an additional requirement, that proposed section 13(k) of ASCMRA is no less stringent than section 510(e) of SMCRA.

BLM further commented that while the exception concerning rainfall was left out of section 15(d) of ASCMRA, which serves as the statutory authority for Arkansas' environmental protection performance standards and regulations, a review of the SCS Handbook for Logan County, Arkansas indicates an annual precipitation of 46 inches and, as such, the probability of 26 inches or less of annual precipitation in the State is probably remote. In its November 22, 1994, issue letter, OSM notified Arkansas that it did not include in its proposed revision at section 15(d)(1) of ASCMRA a counterpart to the last part of section 515(b)(20)(b), which states that ''in those areas or regions of the country where the annual average precipitation is twenty-six inches or less, then the operator's assumption of responsibility and liability will be extended for a period of five full years after the last year of augmented seeded, fertilizing, irrigation, or other work in order to assure compliance with the applicable standards.'' OSM further notified Arkansas that it requires in section 816.116(c)(3) of its rules a 10-year liability period for areas receiving 26 inches or less of precipitation. As a result, OSM requested that Arkansas clarify whether or not the provision at section 816.116(c)(3), regarding the liability period for areas receiving 26 inches or less of annual average precipitation, is applicable to Arkansas on the basis of Arkansas' climate. In its March 1, 1995, revised amendment, Arkansas responded that because Arkansas' climate incurs 50 or more inches of annual precipitation, section 816.116(c)(3) of its regulations is inapplicable and, as such, shall be deleted in a subsequent amendment.

BLM also commented that the amendment to section 5(b)(1) of ASCMRA striking the 2-acre or less exemption appears to follow the intent of SMCRA. As discussed in finding No. 3, Arkansas' proposed deletion of the statutory exemption for operations affecting 2 acres or less is (1) consistent with Arkansas' deletion of the counterpart regulation exemption that OSM previously approved and (2) is no less stringent than SMCRA.

Lastly, BLM commented that the portion of the State law referring to the extraction of coal as an incidental part of the Federal, State, or local government-financed highway or other construction under regulations and the extraction of coal by a landowner for noncommercial use should be in the regulation elsewhere. In response to BLM's last comment, the Arkansas provisions concerning the exemption for coal incident to government-financed highways or other construction can be found at ACA 15–58–106(3) and at Part 707 of Arkansas' rules.

U.S. Forest Service. The U.S. Forest Service responded on October 20, 1994, that it had no additions or corrections to offer on the proposed amendment (administrative record No. AR–534).

U.S. Bureau of Mines. The U.S. Bureau of Mines responded on October 31, 1994, and March 30, 1995, that its Division of Environmental Technology reviewed Arkansas' proposed amendment and had no comment (administrative record Nos. AR–535 and AR–546).

U.S. Fish and Wildlife Service (USFWS). USFWS responded on November 14, 1994, that it had no objections to Arkansas' proposed amendments to sections 5 and 15 of ASCMRA. However, it did express a concern that the amendment to section 13 of ASCMRA, which would provide that certain violations incurred under a remining permit shall not disqualify the holder from obtaining subsequent coal mining permits, should not be adopted (administrative record No. AR–537). USFWS further stated that outstanding violations on existing permits should be corrected or resolved prior to the permit holder being issued additional permits.

In response to USFWS's concern, section 510(e) of SMCRA, as discussed in finding No. 4, provides, as does proposed section 13(k) of ASCMRA, that violations resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining under a permit held by the person making such application shall not disqualify the holder from obtaining subsequent coal mining permits.

Therefore, this provision of proposed section 13(k) of ASCMRA is in accordance with and no less stringent than section 510(e) of SMCRA. Because the Federal regulations at 30 CFR 730.5(b) only require that a State's laws and regulations be ''consistent with'' and ''in accordance with'' SMCRA and the Federal regulations, the Director does not have the authority to require standards in excess of SMCRA or the Federal regulations. On this basis, the Director does not require Arkansas to revise its program in response to USFWS's comment.

U.S. Army Corps of Engineers. The U.S. Army Corps of Engineers responded on March 28, 1995, that it found the changes submitted by Arkansas to be satisfactory (administrative record No. AR–545).

The National Park Service. The National Park Service responded by telephone conversation on April 10, 1995, that it had no comments on the proposed amendment (administrative record No. AR–547).

3. Environmental Protection Agency (EPA) Concurrence and Comments

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

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

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record Nos. AR–524 and AR–541). By letter dated April 11, 1995, EPA responded that it had no comments on the proposed amendment (administrative record No. AR–549).

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

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record Nos. AR–524 and AR–541). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with additional requirements, Arkansas' proposed

amendment as submitted on August 26, 1994, and as revised on March 1 and April 4, 1995.

The Director approves, as discussed in: finding No. 1, section 4(18) of ASCMRA, concerning the definition of the term ''unanticipated event or condition;'' and finding No. 3, section 5(b)(1) of ASCMRA, concerning the applicability of the 2-acre exemption.

With the requirement that Arkansas further revise its statutes, the Director approves, as discussed in: finding No. 2, section 4(19) of ASCMRA, concerning the definition of the term ''lands eligible for remining;'' and finding No. 4, section 13(k) of ASCMRA, concerning remining permit violations.

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

The Federal regulations at 30 CFR Part 904, codifying decisions concerning the Arkansas program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

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

3. National Environmental Policy Act

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

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 22, 1995.

Peter A. Rutledge,

Acting Regional Director, Western Regional Coordinating Center.

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

PART 904—ARKANSAS

1. The authority citation for Part 904 continues to read as follows:

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

2. Section 904.15 is amended by adding paragraph (m) to read as follows:

§ 904.15 Approval of amendments to State regulatory program.

* * * * *

(m) The following sections of the Arkansas Surface Coal Mining and Reclamation Act of 1979 (ASCMRA), as submitted to OSM on August 26, 1994, and as revised on March 1 and April 4, 1995, are approved effective on June 30, 1995:

section 4(18), definition of the term ''unanticipated event or condition;''
4(19), definition of the term ''lands eligible for remining;''
5(b)(1), applicability of the 2-acre exemption; and
13(k), remining permit violations.

3. Section 904.16 is added to read as follows:

§ 904.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), Arkansas is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA or 30 CFR Chapter VII and a timetable for enactment that is consistent with Arkansas' established administrative or legislative procedures.

(a) By August 29, 1995, Arkansas shall revise section 4(19) of the Arkansas Surface Coal Mining and Reclamation Act of 1979 (ASCMRA), concerning the definition of the term ''lands eligible for remining,'' or otherwise modify its program, to exclude those lands addressed by section 411 of SMCRA.

(b) By August 29, 1995, Arkansas shall revise section 13(k) of ASCMRA, concerning remining permit violations, by deleting the phrase ''and section 15(d)(1).''

[FR Doc. 95–15967 Filed 6–29–95; 8:45 am]
BILLING CODE 4310–05–M

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30 CFR Part 904

Arkansas Regulatory Program

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

ACTION: Final rule; correction.

SUMMARY: This document explains and corrects OSM's codified approval of an amendment to Arkansas' permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment revised Arkansas' small operators assistance program (SOAP). OSM published its approval of the Arkansas proposed amendment in a November 17, 1994, final rule **Federal Register** document.

EFFECTIVE DATE: November 17, 1994.

FOR FURTHER INFORMATION CONTACT: Gloria Prettiman, 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: On March 31, 1993, Arkansas submitted to OSM a proposed amendment to its approved permanent regulatory program (administrative record No. AR–496). The amendment consisted of proposed revisions to the Arkansas Surface Coal Mining and Reclamation Act of 1979 at Arkansas Code Annotated. The amendment redefined the term ''small operator'' and expanded the permitting activities eligible for funding under SOAP. On November 17, 1994, OSM approved the amendment submitted by Arkansas (59 FR 59365). This document explains and corrects OSM's instructions for codified approval of the Arkansas amendment.

In the November 17, 1994, **Federal Register** document, OSM codified approval of Arkansas' March 31, 1993, amendment by revising 30 CFR 904.15 to add paragraph (l). However, in the codified section of the document, OSM used the term ''revising'' and omitted five asterisks above the paragraph (l). This caused the elimination of the introductory paragraph and previous approvals for amendments to the Arkansas regulatory program that had been codified at 30 CFR 904.15 (a) through (k), with paragraph (l) published as the introductory paragraph at 30 CFR 904.15. OSM's intent was not to eliminate the introductory paragraph and previous approvals at paragraphs (a) through (k), but was only to add the approval at paragraph (l).

The Federal regulations at 30 CFR Part 904 codifying decisions concerning the Arkansas program are being amended to implement these intended instructions for codification of approval of Arkansas' amendment. Accordingly, the amendatory instruction for 30 CFR 904.15, second column on page 59369, 59 FR 59365, is being corrected to use the term ''amending'' rather than ''revising,'' and to add five asterisks between the amendatory instruction and the newly codified paragraph (l). The substance of OSM's approval at paragraph (l) has not been revised.

Dated: June 27, 1995.

James F. Fulton,

Acting Regional Director, Western Regional Coordinating Center.

The following corrections are made in 30 CFR Part 904, Arkansas Regulatory Program, final rule, published in the **Federal Register** on November 17, 1994 (59 FR 59365). OSM is correcting the amendatory instruction at 30 CFR 904.15, second column on page 59369 (to use the term ''amending'' rather than ''revising,'' and to add five asterisks between the amendatory instruction and the newly codified paragraph (1)), to read as follows:

2. Section 904.15 is amended by adding paragraph (l) to read as follows:

§ 904.15 Approval of amendments to the Arkansas regulatory program.

* * * * *

(l) Revisions to and/or addition of the following provisions of the Arkansas Surface Coal Mining and Reclamation Act of 1979, as submitted to OSM on March 31, 1993, and revised on July 22, 1993, and August 26, 1994, are approved effective November 14, 1994:

Arkansas Code Annotated (ACA) 15–58–104(11), definition of ''small operator;''

ACA 15–58–503(a)(2)(A), activities associated with the development of a surface coal mining and reclamation permit application that are eligible for funding under the small operator's assistance program (SOAP);

ACA 15–58–503(a)(2)(B), the responsibility for training coal operators that meet the SOAP qualifications regarding the preparation of permit applications, and ensuring that qualified coal operators are aware of the available assistance;

ACA 15–58–503(a)(2)(C), an operator's obligation to reimburse the Arkansas Department of Pollution Control and Ecology for the cost of the services rendered under SOAP.

[FR Doc. 95–16273 Filed 6–29–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Chapter V

Compliance with 31 CFR Chapter V with Respect to Fully–Automated Financial Transactions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Policy Statement.

SUMMARY: Due to the wide availability and use by financial institutions of name–recognition software to screen fully–automated financial transactions for potential violations of economic sanctions programs, the Office of Foreign Assets Control (''FAC'') will no longer treat fully–automated transactions differently from manually–processed transactions for civil penalty purposes.

EFFECTIVE DATE: September 1, 1995.

FOR FURTHER INFORMATION CONTACT: Dennis P. Wood, Chief, Compliance Programs Division, tel.: 202/622–2490, or Mrs. B.S. Scott, Chief, Civil Penalties Program, tel.: 202/622–6140, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

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Background

Essential elements of economic sanctions programs administered by FAC include prohibitions on transfers of property to or for the benefit of targeted governments, entities, and individuals, including the blocking of targeted persons' property, when it comes within the jurisdiction of the United States. Civil monetary penalties may be imposed administratively by FAC for violations of these transfer prohibitions and blocking requirements pursuant to the statutes authorizing most FAC sanctions programs. *See, e.g.*, 22 U.S.C. 5113(b) (*repealed* June 8, 1994, *see* Pub. L. 103–149, section 4(a), 107 Stat. 1504 (1993)); Pub. L. 101–513, section 586E, 104 Stat. 2047 (1990); 50 U.S.C. 1705; 50 U.S.C. App. 16.

A large proportion of financial transactions are now handled by computer, without intervention by bank or other financial institution personnel. In the past, FAC treated such fully–automated or ''straight through'' transactions as being beyond the knowledge of financial institutions. Thus, for purposes of administering its

civil monetary penalty authority under sanctions programs contained in 31 CFR chapter V, FAC considered the fact that a transfer violation arose in a fully–automated transaction as a strongly mitigating circumstance in determining liability.

In the past few years, financial institutions that handle significant volumes of international transfers have developed and put into use ''interdiction software'' that scans incoming automated transfer instructions for words (names of banks and transaction parties, geographical locations, and transaction descriptions) likely to indicate that a transaction is subject to the prohibitions in 31 CFR chapter V. Commercial interdiction software is now widely available and in use, and information needed to update the database used in screening transactions as FAC amends its lists of blocked persons and specially designated nationals is immediately available for computer downloading from numerous governmental and private sources. The use of such software by financial institutions has substantially enhanced the effectiveness of FAC sanctions programs.

It has been determined that it is no longer appropriate to treat fully–automated financial transactions that violate economic sanctions prohibitions as being beyond a financial institution's knowledge or intent. Beginning on September 1, 1995, FAC will no longer treat the fully–automated processing of violative transactions as a full defense in civil penalty proceedings.

Dated: May 31, 1995.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 5, 1995.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement).

[FR Doc. 95–16121 Filed 6–27–95; 4:26 pm]

BILLING CODE 4810–25–F

Office of Foreign Assets Control

31 CFR Part 505

Regulations Prohibiting Transactions Involving the Shipment of Certain Merchandise Between Foreign Countries; Partial Lifting of Restrictions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: The Treasury Department is lifting prospectively prohibitions set forth in the Transaction Control Regulations as they relate to offshore trade in strategic goods of the types controlled for exportation from the United States for national security reasons under the Export Administration Act of 1979. Offshore transactions in items of the types controlled for exportation under the Arms Export Control Act of 1976 or the Atomic Energy Act of 1954 remain subject to the prohibitions.

EFFECTIVE DATE: June 27, 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, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

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Background

On April 4, 1994, the Department of Commerce amended the Export Administration Regulations, 31 CFR parts 768–799 (1994) (the ''EAR''), to reflect the termination of the Cold War regime known as The Coordinating Committee for Multilateral Export Controls (''COCOM'') on March 31, 1994. The exportation of many dual–use items to civil end–users in the former Soviet Bloc and China was authorized by a new General License GLX. In light of these developments, the Office of Foreign Assets Control is amending the Transaction Control Regulations, 31 CFR part 505 (the ''TCR''), that prohibit ''persons within the United States'' (U.S. firms and residents and foreign firms owned or controlled by them) from involvement in offshore strategic exports from third countries to certain Communist and formerly Communist countries listed on a schedule in § 505.10.

Section 505.10 is amended by removing prohibitions pertaining to transactions in items that, were they of U.S. origin, would be restricted for exportation from the United States for national security reasons, as listed on the Commodity Control List in supplement no. 1 to part 799 of the EAR. Persons within the United States remain subject to the prohibitions in the TCR as they relate to offshore trade in items of the types controlled for exportation from the United States under the Arms Export Control Act of 1976, 22 U.S.C. 2778, or the Atomic Energy Act of 1954, 42 U.S.C. 2011–2297g–4. Any person within the United States who sells or purchases, or arranges the purchase, sale or financing of these items from a third country to a designated country must be covered by a general or specific license from the Office of Foreign Assets Control authorizing the transaction. This final rule does not affect enforcement actions with respect to prior violations of this part.

Because the TCR 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 in 31 CFR Part 505

Administrative practice and procedure, Banks, banking, COCOM, Communist countries, Exports, Finance, Foreign trade, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 31 CFR part 505 is amended as set forth below:

PART 505—REGULATIONS PROHIBITING TRANSACTIONS INVOLVING THE SHIPMENT OF CERTAIN MERCHANDISE BETWEEN FOREIGN COUNTRIES

1. The authority citation for part 505 is revised to read as follows:

Authority: 50 U.S.C. App. 1–44; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

2. Paragraph (b), preceding the ''Schedule,'' of § 505.10 is revised to read as follows:

§ 505.10 Prohibitions.

* * * * *

(b) The merchandise is of a type the unauthorized exportation of which from the United States is prohibited by regulations issued under the Arms Export Control Act of 1976, 22 U.S.C. 2778, or the Atomic Energy Act of 1954, 42 U.S.C. 2011–2297g–4, or successor acts restricting the exportation of strategic goods.

* * * * *

3. Paragraphs (a) introductory text and (a)(1) of § 505.31 are revised to read as follows:

§ 505.31 General license for offshore transactions from certain countries.

(a) Except as provided in paragraph (b) of this section, all transactions prohibited by § 505.10 are hereby authorized provided:

(1) Shipment is to a country listed in the schedule to § 505.10, other than North Korea; and

* * * * *

Dated: June 14, 1995.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 16, 1995.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–16123 Filed 6–27–95; 4:26 pm]

BILLING CODE 4810–25–F

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31 CFR Part 585

Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations; Bosnian Serb Sanctions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: This rule amends the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations to: Implement Executive Order 12934 of October 25, 1994, imposing sanctions on the Bosnian Serb forces and authorities and the areas of the Republic of Bosnia and Herzegovina that they control, in view of United Nations Security Council Resolution No. 942; provide an agency interpretation of the new prohibitions as preventing certain financial services to the areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces and to entities worldwide owned or controlled from such areas; make additional conforming amendments to reflect the implementation of Executive Order 12846 of April 25, 1993; and make certain clarifying and technical amendments.

EFFECTIVE DATE: June 30, 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

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Background

On October 25, 1994, the President issued Executive Order 12934, 59 FR 54117 (October 27, 1994), expanding the scope of the national emergency declared in Executive Order 12808 to extend certain sanctions to the Bosnian Serb forces and authorities and the areas of the Republic of Bosnia and Herzegovina that they control, taking into account the provisions of United Nations Security Council Resolution No. 942 of September 23, 1994. Effective October 25, 1994, the Executive order blocks all property and interests in property of the Bosnian Serb military and paramilitary forces and the authorities in those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces; entities organized or located in those areas; entities owned or controlled directly or indirectly by any person in, or resident in, those areas; and any person acting for or on behalf of any of the above. A partial listing of such persons was published on April 18, 1995. 60 FR 19448. The part heading is revised to read: ''The Federal Republic of Yugoslavia (Serbia and Montenegro) and the Bosnian Serb–Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations, 31 CFR part 585 (the ''Regulations''),'' and § 585.201 of the Regulations is amended to implement this provision. E.O. 12934, section 1.

Section 585.217 of the Regulations is amended to implement the Executive order's prohibition in section 2(b) against the entry of U.S.–flag vessels into the riverine ports of those areas of the Republic of Bosnia and Herzegovina controlled by Bosnian Serb forces. Section 585.218 of the Regulations, which already prohibits exportation to, importation from, and transhipment through those areas of the Republic of Bosnia and Herzegovina controlled by Bosnian Serb forces, is amended to reflect the Executive order's prohibition in section 2(a) against the provision or exportation of services to those areas or to any person for the purpose of any business carried on in those areas, either from the United States or by a U.S. person.

The prohibitions of Executive Order 12934 apply notwithstanding any prior contracts, international agreements, licenses or authorizations, but may be modified by regulation, order or license issued pursuant to that Executive order.

In addition to implementing the provisions of Executive Order 12934, this final rule amends several provisions of the Regulations pertaining to property interests blocked under § 585.201 by substituting a simple reference to ''property or interests in property blocked pursuant to § 585.201'' for a lengthy list of all persons whose property interests are blocked pursuant to Executive Orders 12808, 12810, 12846, or 12934.

Section 585.420 is added interpreting new §§ 585.201(c) and 585.218(b) of the Regulations to prohibit the transfer of funds by U.S. financial institutions to or for the benefit of persons whose property and interests in property are blocked pursuant to § 585.201(c), on the basis that such transfers are blocked by operation of law upon their initiation, and that such transfers involve an illegal exportation of financial services from

the United States or by a United States person.

Finally, paragraph (c) of § 585.512 of the Regulations, which states that charge cards may not be used by U.S. persons authorized to engage in certain travel–related transactions under this section while in the FRY (S&M), is amended to clarify (but not modify) the authorizations contained in that section.

Because the 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 in 31 CFR Part 585

Administrative practice and procedure, Banks, banking, Foreign investments in United States, Foreign trade, Penalties, Reporting and recordkeeping requirements, Securities, Transportation, Yugoslavia.

For the reasons set forth in the preamble, 31 CFR part 585 is amended as set forth below:

1. The heading to part 585 is revised to read as follows:

PART 585—FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO) AND BOSNIAN SERB–CONTROLLED AREAS OF THE REPUBLIC OF BOSNIA AND HERZEGOVINA SANCTIONS REGULATIONS

2. The authority citation for part 585 is revised to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 49 U.S.C. 40106(b); 50 U.S.C. 1601–1651; 50 U.S.C. 1701–1706; E.O. 12808, 57 FR 23299, 3 CFR, 1992 Comp., p. 305; E.O. 12810, 57 FR 24347, 3 CFR, 1992 Comp., p. 307; E.O. 12831, 58 FR 5253, 3 CFR, 1993 Comp., p. 576; E.O. 12846, 58 FR 25771, 3 CFR, 1993 Comp., p. 599; E.O. 12934, 59 FR 54117 (October 27, 1994).

Subpart B—Prohibitions

3. Section 585.201 is amended as follows: In paragraph (a) by removing ''are'' wherever it appears and adding ''is''; by removing ''come'' wherever it appears and adding ''comes''; by redesignating paragraph (c) as paragraph (d); and by adding new paragraph (c) to read as follows:

§ 585.201 Prohibited transactions involving blocked property; transactions with respect to securities.

* * * * *

(c) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before 11:59 p.m. EDT, October 25, 1994, no property or interest in property of the following persons that is in the United States, that hereafter comes within the United States, or that is or hereafter comes within the possession or control of United States persons, including their overseas branches, may be transferred, paid, exported, withdrawn, or otherwise dealt in:

(1) The Bosnian Serb military and paramilitary forces and the authorities in those areas of the Republic of Bosnia and Herzegovina under the control of those forces;

(2) Any entity, including any commercial, industrial, or public utility undertaking, organized or located in those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces;

(3) Any entity, wherever organized or located, which is owned or controlled directly or indirectly by any person in, or resident in, those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces; and

(4) Any person acting for or on behalf of any person included within the scope of paragraphs (c)(1), (2) or (3) of this section.

4.Paragraphs (a), (b), and (e) of § 585.202 are revised to read as follows:

§ 585.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date specified in § 585.301 which is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, license, or other authorization hereunder and involves any property or interest in property blocked pursuant to § 585.201 is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property or interest in property blocked pursuant to § 585.201, unless the person with whom such property is held or maintained, prior to such date, had written notice of the transfer or by any written evidence had recognized such transfer.

* * * * *

(e) Unless licensed or authorized pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property or interest in property blocked pursuant to § 585.201.

§ 585.203 [Amended]

5. Section 585.203 is amended as follows: In paragraph (a)(2) by removing ''entity of the FRY (S&M)'' and adding ''person(s)'' in its place, and in paragraph (c) by revising the first sentence to read as follows: ''U.S. financial institutions receiving instructions to execute a payment or transfer of funds they hold in which a person has an interest whose property or interests in property are blocked pursuant to § 585.201, shall block the funds and provide written notification to the Compliance Programs Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW––2131 Annex, Washington, DC 20220, within 10 business days from the value date of the payment or transfer.''.

6. Section 585.217 is revised to read as follows:

§ 585.217 Entry into the territorial waters of the FRY (S&M) or the riverine ports of the Republic of Bosnia and Herzegovina prohibited.

Except as otherwise authorized by the Director of the Office of Foreign Assets Control pursuant to this part, no vessel registered in the United States or owned or controlled by U.S. persons, other than a United States naval vessel, may enter:

(a) The territorial waters of the FRY (S&M); or

(b) The riverine ports of those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces.

7. Section 585.218 is revised to read as follows:

§ 585.218 Trade in United Nations Protected Areas of Croatia and those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces.

The following are prohibited, except as otherwise authorized by the Director of the Office of Foreign Assets Control pursuant to this part:

(a) Any dealing by a United States person relating to the importation from, exportation to, or transshipment of goods through the United Nations Protected Areas in the Republic of Croatia and those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces, or

activity of any kind that promotes or is intended to promote such dealing (see § 585.524); and

(b) The provision or exportation of services to those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces, or to any person for the purpose of any business carried on in those areas, either from the United States or by a United States person.

Subpart C—General Definitions

8. Section 585.301 is amended as follows: In paragraph (a) by removing the reference ''§§ 585.201 (a) & (c)'' and adding ''§§ 585.201 (a) and (d)'' in its place; in paragraph (e) by adding ''(a)'' after the references to ''585.217'' and ''585.218''; and by removing ''and'' from the end of paragraph (d) and the period from the end of paragraph (e), by adding a semicolon and ''and'' to the end of paragraph (e), and by adding a new paragraph (f) to read as follows:

§ 585.301 Effective date.

* * * * *

(f) With respect to §§ 585.201(c), 585.217(b), and 585.218(b), 11:59 p.m. EDT, October 25, 1994.

9. Section 585.302 is revised to read as follows:

§ 585.302 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account and any property or interest in property blocked pursuant to § 585.201 with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control authorizing such action.

Subpart D—Interpretations

10. Section 585.403 is revised to read as follows:

§ 585.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) from a person whose property or property interests are blocked pursuant to § 585.201, such property shall no longer be deemed to be property blocked pursuant to § 585.201, unless there exists in the property another interest that is blocked pursuant to § 585.201 or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property or property interests are blocked pursuant to § 585.201, such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 585.405 [Amended]

11. Section 585.405 is amended by removing ''the Government of the FRY (S&M) or the former Government of the Social Federal Republic of Yugoslavia,'' and adding ''a person whose property or interests in property are blocked pursuant to § 585.201'', and by removing ''and'' between the references to ''§ 585.201'' and ''§§ 585.204–585.212'', adding a comma in its place, and adding ''and §§ 585.217–585.218'' to the end of the first sentence.

12. Paragraph (a) of § 585.406 is revised to read as follows:

§ 585.406 Extensions of credits or loans.

(a) The prohibition in § 585.210 applies to the unlicensed renewal of credits or loans held in the name of a person whose property or interests in property are blocked pursuant to § 585.201 that were in existence on the effective date, whether by affirmative action or operation of law.

* * * * *

13. Paragraph (a) of § 585.408 is revised to read as follows:

§ 585.408 Offshore transactions.

(a) The prohibitions contained in §§ 585.201 and 585.206 apply to transactions by U.S. persons in locations outside the United States with respect to property in which the U.S. person knows, or has reason to know, that a person whose property or interests in property are blocked pursuant to § 585.201 has or has had an interest since the effective date specified in § 585.301, or that such property is held in the name of a person whose property or interests in property are blocked pursuant to § 585.201.

* * * * *

14. The note to § 585.412 is revised to read as follows:

§ 585.412 Release of goods originating in the FRY (S&M) from a bonded warehouse or foreign trade zone.

* * * * *

(Note: property blocked pursuant to § 585.201 may not be released unless authorized or licensed by the Office of Foreign Assets Control.)

§ 585.413 [Amended]

15. Section 585.413 is amended by revising the second sentence to read as follows: ''However, any payment in connection with such importation is subject to the prohibitions contained in §§ 585.201 and 585.210.''.

16. Section 585.420 is added to subpart D to read as follows:

§ 585.420 Prohibited transfer of funds involving those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces.

Sections 585.201(c) and 585.218(b) prohibit U.S. financial institutions from committing or transferring, directly or indirectly, funds or other financial or economic resources to or for the benefit of any person whose property or interests in property are blocked pursuant to § 585.201(c).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

17. The introductory text and paragraph (c) of § 585.504 are revised to read as follows:

§ 585.504 Investment and reinvestment of certain funds.

U.S. financial institutions are hereby authorized to invest and reinvest assets blocked pursuant to § 585.201, subject to the following conditions:

* * * * *

(c) No immediate financial or economic benefit accrues (*e.g.*, through pledging or other use) to any person whose property or interests in property are blocked pursuant to § 585.201.

18. Paragraphs (a) and (b) of § 585.505 are revised to read as follows:

§ 585.505 Completion of certain transactions related to bankers acceptances authorized.

(a) Persons other than those whose property or interests in property are blocked pursuant to § 585.201 are authorized to buy, sell, and satisfy obligations with respect to bankers acceptances, and to pay under deferred payment undertakings, relating to a property interest blocked pursuant to § 585.201, as long as the bankers acceptances were created or the deferred payment undertakings were incurred prior to the effective date.

(b) Persons other than those whose property or interests in property are blocked pursuant to § 585.201 are authorized to buy, sell, and satisfy obligations with respect to bankers acceptances, and to pay under deferred payment undertakings, relating to the importation or exportation of goods to or from the FRY (S&M) that do not involve a property interest blocked

pursuant to § 585.201, as long as the bankers acceptances or the deferred payment undertakings were accepted prior to the effective date.

* * * * *

19. The section heading and paragraphs (a) and (b) of § 585.506 are revised to read as follows:

§ 585.506 Payments of obligations to persons within the United States authorized.

(a) The transfer of funds after the effective date by, through, or to any U.S. financial institution or other U.S. person not blocked pursuant to this chapter solely for the purpose of payment of obligations of a person whose property or interests in property are blocked pursuant to § 585.201 to persons or accounts within the United States is authorized, provided that the obligation arose prior to the effective date, and the payment requires no debit to a blocked account. Property is not blocked by virtue of being transferred or received pursuant to this section.

(b) A person receiving payment under this section may distribute all or part of that payment to any person, provided that any such payment to a person whose property or interests in property are blocked pursuant to § 585.201 must be to a blocked account in a U.S. financial institution.

* * * * *

§ 585.512 [Amended]

20. Paragraph (c) of § 585.512 is amended by removing ‘‘, or to engage in transactions, while traveling in the FRY (S&M).’’ and by adding ‘‘in the FRY (S&M) in connection with any transactions authorized by this section.’’ in its place.

§ 585.524 [Amended]

21. The section heading of § 585.524 is amended by removing ‘‘Serb–controlled areas of Bosnia–Hercegovina’’ and adding ‘‘those areas of the Republic of Bosnia and Herzegovina controlled by Bosnian Serb forces’’ in its place. Paragraphs (a) and (b) of § 585.524 are amended by removing ‘‘Bosnia–Hercegovina’’ wherever it appears and adding ‘‘Bosnia and Herzegovina’’ in its place.

Dated: June 23, 1995.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 23, 1995.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–16122 Filed 6–28–95; 9:20 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 1, 23, and 177

[CGD 95–057]

RIN 2115–AF20

Clarification of Coast Guard Rulemaking Procedures

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the regulations describing its rulemaking procedures to accurately reflect the rulemaking procedures currently in use. This revision clarifies delegations of authority and removes references to hearing officers, which the Coast Guard no longer uses in its regulatory process. It also clarifies who is designated to receive service of process and requests to testify on behalf of members and employees of the Coast Guard.

DATES: This rule is effective on June 30, 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), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington D.C. 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: LT R. Goldberg, Staff Attorney, Regulations and Administrative Law Division, Office of Chief Counsel, U.S. Coast Guard Headquarters, (202) 267–6004.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LT R. Goldberg, Project Manager, Office of Chief Counsel, and CDR T. Cahill, Project Counsel, Office of Chief Counsel.

Background and Purpose

The Coast Guard recently completed an extensive review of its regulatory process. That review, which included a public meeting on September 20, 1993, resulted in a number of changes. Among these changes is greater Coast Guard emphasis on providing increased opportunities for public involvement in rulemaking and a greater emphasis on internal Coast Guard accountability. These changes are reflected in a new Coast Guard Headquarters Instruction which was recently signed by the Chief Counsel.

The provisions of 33 CFR subpart 1.05, describing the Coast Guard's rulemaking procedures, have not been revised since 1976 and do not reflect current Coast Guard rulemaking practices and procedures. For example, the current § 1.05–15 provides that public hearings are conducted by a ‘‘hearing officer or panel of officers’’. This procedure is no longer used. This type of outmoded provision in Subpart 1.05 may mislead the public.

The subpart is reorganized and revised to provide guidance to the public regarding a variety of Coast Guard procedures including delegations of rulemaking authority by office, submissions of petitions for rulemaking, and internal rulemaking procedures. Additionally, as part of the revision and reorganization, provisions that are currently in subpart 1.05 but properly belong in other areas, are moved.

Subpart 1.05 is being revised to more accurately reflect and provide better guidance to the public on current Coast Guard rulemaking procedures. As part of this revision, all references to hearing officers are deleted as the Coast Guard no longer follows this procedure for rulemaking. Section 1.05–1 is amended to clarify rulemaking delegations to Coast Guard District Commanders, office chiefs at Coast Guard Headquarters, and Captains of the Port. The changes also clarify that, in addition to the authorities previously listed in § 1.05–1, both the Chief, Office of Navigation Safety and Waterway Services, and the Chief, Office of Marine Safety, Security, and Environmental Protection may make certifications under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605) for the rules that they issue. References to the delegations of authority given to office chiefs, Coast Guard Headquarters, the delegation to District Commanders to establish special local regulations, and the delegation to District Commanders and Captains of the Port to establish safety and security zones, have been added.

Delegations that do not involve rulemaking authority are moved to more appropriate parts of the Code of Federal Regulations. The reference to the delegation of authority to the Chief, Office of Navigation Safety and Waterway Services to grant exemptions from the provisions of the Vessel Bridge-to-Bridge Radiotelephone Act, previously in § 1.05–1(c)(1), is moved to 33 CFR part 26, Vessel Bridge-to-Bridge Radiotelephone Regulations. The reference to the delegation of authority to each Coast Guard District

Commander to issue orders that a specific boat is unsafe for a specific voyage and the provisions which must be contained within these orders is moved from § 1.05–1(d)–(f) to 33 CFR part 177, Correction of Especially Hazardous Conditions. In both moves, no substantive changes are made.

A number of new sections clarify the procedures for public involvement in the Coast Guard's rulemaking procedures. Section 1.05–5 is added to clarify the role of the Coast Guard's Marine Safety Council in the rulemaking process. A new § 1.05–10 provides an overview of the Coast Guard's regulatory process, and a new § 1.05–15 outlines the Coast Guard's policy on public participation in the rulemaking process. A new section, § 1.05–20, is added to outline the procedures for the public to petition the Coast Guard to initiate a rulemaking. New sections also clarify the Coast Guard's policies on the maintenance of a public docket (§ 1.05–25), the publication of supplemental notices of proposed rulemaking (§ 1.05–40), the publication of interim rules (§ 1.05–45), and the option to formulate rules through the use of negotiated rulemaking (§ 1.05–60).

In addition, the Coast Guard is clarifying 33 CFR subpart 1.20, ''Testimony by Coast Guard Personnel and Production of Records in Legal Proceedings,'' to identify who is designated by the Chief Counsel of the Coast Guard to receive service of process and requests to testify on behalf of members and employees of the Coast Guard. The changes in designated officials are necessary to provide a clear definition of who is deemed ''agency counsel'' under the Department of Transportation's recently amended rules found at 49 CFR part 9, ''Testimony of Employees of the Department and Production of Records in Legal Proceedings''. The Coast Guard is issuing these amendments due to recent changes in Coast Guard organization and recent modifications to the procedures for the testimony of employees of the Department of Transportation and production of records in legal proceedings.

Regulatory Information

This rule is being published as a final rule without a prior notice of proposed rulemaking. This rulemaking merely clarifies and updates the Coast Guard's internal rulemaking procedures and delegations of authority and will not impose any substantive requirements on the public. Therefore, the Coast Guard, for good cause finds, under 5 U.S.C. 553 (b) and (d), that notice and public procedure on the notice are unnecessary, and that the rule may be made effective upon publication.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has 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). 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. As this rule involves internal agency practices and procedures, it will not impose any costs on the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' 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. The Coast Guard has evaluated this rule under the Regulatory Flexibility Act. This rule involves internal Coast Guard rulemaking procedures and will not have substantive impact on the public. Therefore, 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 rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994), this rule is categorically excluded from further environmental documentation as a regulation of a procedural nature. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 1

Administrative practice and procedures, Authority delegations (Government agencies), Coast Guard, Freedom of information, Penalties.

33 CFR Part 26

Coast Guard, Communications equipment, Vessels.

33 CFR Part 177

Coast Guard, Marine safety.

For the reasons set out in the preamble, the Coast Guard amends subparts 1.05 and 1.20 of part 1, part 26 and part 177 of title 33, Code of Federal Regulations as follows:

PART 1—GENERAL PROVISIONS

1. Subpart 1.05 is revised to read as follows:

Subpart 1.05—Rulemaking

Sec.

1.05–1 Delegation of rulemaking authority.
1.05–5 Marine Safety Council.
1.05–10 Regulatory process overview.
1.05–15 Public participation.
1.05–20 Petitions for rulemaking.
1.05–25 Public docket.
1.05–30 Advance notice of proposed rulemaking (ANPRM).
1.05–35 Notice of proposed rulemaking (NPRM).
1.05–40 Supplemental notice of proposed rulemaking (SNPRM).
1.05–45 Interim rule.
1.05–50 Final rule.
1.05–60 Negotiated rulemaking.

Authority: 5 U.S.C. 552, 553, App. 2; 14 U.S.C. 2, 631, 632, and 633; 33 U.S.C. 471, 499; 49 U.S.C. 101, 322; 49 CFR 1.4(b), 1.45(b), and 1.46.

Subpart 1.05—Rulemaking

§ 1.05–1 Delegation of rulemaking authority.

(a) The Secretary of Transportation is empowered by various statutes to issue regulations regarding the functions, powers and duties of the Coast Guard.

(b) The Secretary of Transportation has delegated much of this authority to the Commandant, U.S. Coast Guard, including authority to issue regulations regarding the functions of the Coast Guard and the authority to redelegate and authorize successive redelegations of that authority within the Coast Guard.

These delegations are reflected in 49 CFR 1.45 and 1.46.

(c) The Commandant has reserved the authority to issue any rules and regulations determined to be significant under Executive Order 12866, Regulatory Planning and Review.

(d) The Commandant has redelegated to the various office chiefs at U.S. Coast Guard Headquarters, with the reservation that this authority shall not be further redelegated, the authority to develop and issue regulations necessary to implement laws, treaties, or Executive Orders associated with their assigned programs; issue amendments to existing regulations as necessary; and submit regulatory proposals for Marine Safety Council consideration.

(e)(1) The Commandant has redelegated to Coast Guard District Commanders, with the reservation that this authority shall not be further redelegated, the authority to issue regulations pertaining to the following:

(i) Anchorage grounds and special anchorage areas.

(ii) The designation of lightering zones.

(iii) The operation of drawbridges.

(iv) The establishment of Regulated Navigation Areas.

(v) The establishment of safety and security zones.

(vi) The establishment of special local regulations.

(2) This delegation does not extend to those matters specified in paragraph (c) of this section or rules and regulations which have been shown to raise substantial issues or to generate controversy.

(f) Except for those matters specified in paragraph (c) of this section, the Commandant has redelegated to Coast Guard Captains of the Port, with the reservation that this authority shall not be further redelegated, the authority to establish safety and security zones.

(g) The Commandant has redelegated to Coast Guard District Commanders, Captains of the Port, the Chief, Office of Navigation Safety and Waterway services, and the Chief, Office of Marine Safety, Security, and Environmental Protection the authority to make the certification required by section 605(b) of the Regulatory Flexibility Act (Sec. 605(b), Pub. L. 96–354, 94 Stat. 1168 (5 U.S.C. 605)) for rules that they issue.

§ 1.05–5 Marine Safety Council.

The Marine Safety Council, composed of senior Coast Guard officials, acts as policy advisor to the Commandant and is the focal point of the Coast Guard regulatory system. The Marine Safety Council provides oversight, review, and guidance for all Coast Guard regulatory activity.

§ 1.05–10 Regulatory process overview.

(a) Most rules of local applicability are issued by District Commanders and Captains of the Port, while rules of wider applicability are issued by senior Coast Guard officials at Coast Guard Headquarters, For both significant rulemaking (defined by Executive Order 12866, Regulatory Planning and Review and Department of Transportation Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations) and non-significant rulemaking, other than those areas delegated to District Commanders and Captains of the Port, the regulatory process begins when an office chief with program responsibilities identifies a possible need for a new regulation or for changes to an existing regulation. The need may arise due to statutory changes, or be based on internal review or public input. Early public involvement is strongly encouraged.

(b) After a tentative regulatory approach is developed, a regulatory project proposal is submitted to the Marine Safety Council for approval. The proposal describes the scope of the proposed regulation, alternatives considered, and potential cost and benefits, including possible environmental impacts. All regulatory projects require Marine Safety Council approval.

(c) Significant rulemaking projects must also be approved by the Commandant of the Coast Guard.

(d) If the project is approved, the necessary documents are drafted, including documents to be published in the **Federal Register**. These may include regulatory evaluations, environmental analyses, requests for comments, announcements of public meetings, notices of proposed rulemakings, and final rules.

§ 1.05–15 Public participation.

The Coast Guard considers public participation essential to effective rulemaking, and encourages the public to participate in its rulemaking process. Coast Guard policy is to provide opportunities for public participation early in potential rulemaking projects. Generally, the Coast Guard will solicit public input by publishing a notice of public meeting or request for comments in the **Federal Register**. Advance Notices of Proposed Rulemaking, Notices of Proposed Rulemaking, Supplemental Notices of Proposed Rulemaking, and Interim Rules will usually provide 90 days, or more if possible, after publication for submission of comments. This time period is intended to allow interested persons the opportunity to participate in the rulemaking process through the submission of written data and views. However, certain cases and circumstances may make it necessary to provide a shorter comment period. Public meetings may also be held to provide an opportunity for oral presentations. The Coast Guard will consider the comments received and, in subsequent rulemaking documents, will incorporate a concise general statement of the comments received and identify changes from a proposed rule based on the comments.

§ 1.05–20 Petitions for rulemaking.

(a) Any member of the public may petition the Coast Guard to undertake a rulemaking action. There is no prescribed form for a petition for rulemaking, but the document should provide some supporting information as to why the petitioner believes the proposed rulemaking is necessary and the document should clearly indicate that it is a petition for rulemaking. Petitions should be addressed to the Executive Secretary, Marine Safety Council (G–LRA/3406), United States Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

(b) The petitioner will be notified of the Coast Guard's decision whether to initiate a rulemaking or not. If the Coast Guard decides not to pursue a rulemaking, the petitioner will be notified of the reasons why. If the Coast Guard decides to initiate rulemaking, it will follow the procedure outlined in this subpart. The Coast Guard may publish a notice acknowledging receipt of a petition for rulemaking in the **Federal Register**.

(c) Any petition for rulemaking and any reply to the petition will be kept in a public file open for inspection.

§ 1.05–25 Public docket.

(a) A public file is maintained for each petition for rulemaking and each Coast Guard regulation and notice published in the **Federal Register**. Each file contains copies of every rulemaking document published for the project, public comments received, summaries of public meetings or hearings, regulatory assessments, and other publicly-available information. Members of the public may inspect the public docket and copy any documents in the file. Each rulemaking document will identify where the public file for that rulemaking is maintained.

(b) The public dockets for Coast Guard rulemaking activity initiated by

Coast Guard District Commanders are available for public inspection at the appropriate Coast Guard District office.

(c) The public dockets for Coast Guard rulemaking activity initiated by Captains of the Port are available for inspection at the appropriate Captain of the Port office.

§ 1.05–30 Advance notice of proposed rulemaking (ANPRM).

An advance notice of proposed rulemaking may be used to alert the affected public about a new regulatory project, or when the Coast Guard needs more information about what form proposed regulations should take, the actual need for a regulation, the cost of a proposal, or any other information. The ANPRM may solicit general information or ask the public to respond to specific questions.

§ 1.05–35 Notice of proposed rulemaking (NPRM).

Under the Administrative Procedure Act (APA), 5 U.S.C. 553, an NPRM is generally published in the **Federal Register** for Coast Guard rulemakings. The NPRM normally contains a preamble statement in sufficient detail to explain the proposal, its background, basis, and purpose, and the various issues involved. It also contains a discussion of any comments received in response to prior notices, a citation of legal authority for the rule, and the text of the proposed rule.

§ 1.05–40 Supplemental notice of proposed rulemaking (SNPRM).

An SNPRM may be issued if a proposed rule has been substantially changed from the original notice of proposed rulemaking. The supplemental notice advises the public of the revised proposal and provides an opportunity for additional comment. To give the public a reasonable opportunity to become reacquainted with a rulemaking, a supplemental notice may also be issued if considerable time has elapsed since publication of a notice of proposed rulemaking. An SNPRM contains the same type of information generally included in an NPRM.

§ 1.05–45 Interim rule.

(a) An interim rule may be issued when it is in the public interest to promulgate an effective rule while keeping the rulemaking open for further refinement. For example, an interim rule may be issued in instances when normal procedures for notice and comment prior to issuing an effective rule are not required, minor changes to the final rule may be necessary after the interim rule has been in place for some time, or the interim rule only implements portions of a proposed rule, while other portions of the proposed rule are still under development.

(b) An interim rule will be published in the **Federal Register** with an effective date that will generally be at least 30 days after the date of publication. After the effective date, an interim rule is enforceable and is codified in the next annual revision of the appropriate title of the Code of Federal Regulations.

§ 1.05–50 Final rule.

In some instances, a final rule may be issued without prior notice and comment. When notice and comment procedures have been used, and after all comments received have been considered, a final rule is issued. A final rule document contains a preamble that discusses comments received, responses to comments and changes made from the proposed or interim rule, a citation of legal authority, and the text of the rule.

§ 1.05–60 Negotiated rulemaking.

(a) The Coast Guard may establish a negotiated rulemaking committee under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) when it is in the public interest.

(b) Generally, the Coast Guard will consider negotiated rulemaking when:

(1) There is a need for a rule;

(2) There are a limited number of representatives for identifiable parties affected by the rule;

(3) There is a reasonable chance that balanced representation can be reached in the negotiated rulemaking committee and that the committee members will negotiate in good faith;

(4) There is a likelihood of a committee consensus in a fixed time period;

(5) The negotiated rulemaking process will not unreasonably delay the rule;

(6) The Coast Guard has resources to do negotiated rulemaking; and

(7) The Coast Guard can use the consensus of the committee in formulating the NPRM and final rule.

Subpart 1.20—[Amended]

2. The authority citation for subpart 1.20 is revised to read as follows:

Authority: 5 U.S.C. 301; 14 U.S.C. 632, 633, 49 U.S.C. 322; 49 CFR 1.46 and part 9.

3. In § 1.20–1, paragraphs (b) and (c) are revised to read as follows:

§ 1.20–1 Testimony by Coast Guard personnel and production of records in legal proceedings.

* * * * *

(b) Except for the acceptance of service of process or pleadings under paragraph (d) of this section and 49 CFR 9.19, the Legal Officer of each Maintenance and Logistics Command, each District Legal Officer, and the Legal Officer assigned to any other Coast Guard unit or command, for matters involving personnel assigned to their command, are delegated the functions of ''agency counsel'' described in 49 CFR part 9.

(c) A request for a member or employee of the Coast Guard to testify, or for permission to interview such a member or employee, should be made to the Legal officer serving the command to which that member or employee is assigned, or, if the member or employee is serving at Coast Guard Headquarters, or with a command receiving legal services from the Chief counsel, U.S. Coast Guard, to the Chief, Claims and Litigation Division. Should the member or employee no longer be employed by the Coast Guard, and the testimony or information sought falls within the provisions of 49 CFR part 9, the request should be made to the District Legal Officer serving the geographic area where the former member or employee resides or, if no District Legal Officer has geographic responsibility, to the Chief, Claims and Litigation Division.

* * * * *

PART 26—[AMENDED]

4. The authority citation for part 26 is revised to read as follows:

Authority: 14 U.S.C. 2; 33 U.S.C. 1201–1208; 49 CFR 1.45(b), 1.46; Rule 1, International Regulations for the Prevention of Collisions at Sea.

5. In § 26.08, paragraphs (a) and (b) are redesignated as paragraphs (b) and (c) and a new paragraph (a) is added to read as follows:

§ 26.08 Exemption procedures.

(a) The Commandant has redelegated to the Chief, Office of Navigation Safety and Waterway Services, U.S. Coast Guard Headquarters, with the reservation that this authority shall not be further redelegated, the authority to grant exemptions from provisions of the Vessel Bridge-to-Bridge Radiotelephone Act and this part.

* * * * *

PART 177—[AMENDED]

6. The authority citation for part 177 is revised to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.45(b), 1.46.

7. Section 177.04 is added to read as follows:

§ 177.04 Order of unsafe condition.

(a) The Commandant has redelegated to Coast Guard District Commanders, with the reservation that this authority shall not be further redelegated, the authority, under 46 U.S.C. 4308, to issue orders applicable to a specific boat within the District Commander's jurisdiction designating that boat unsafe for a specific voyage on a specific body of water when it is determined, under the provisions of § 177.07(g), that an unsafe condition exists.

(b) Each order issued by a Coast Guard District Commander under the provisions of paragraph (a) of this section will contain:

(1) Notice that the person upon whom the order is served has the right under the Administrative Procedure Act (5 U.S.C. 553(e)), to petition for reconsideration and repeal of the order;

(2) Full title and address of the Coast Guard District Commander to whom the petition is to be submitted; and

(3) Notice that the petition should contain:

(i) The text or substance of the order which the petitioner seeks to have reconsidered and repealed;

(ii) A statement of the action sought by the petitioner;

(iii) Whatever arguments or data that are available to the petitioner to support the action sought; and

(iv) An advisement that if the petitioner desires reconsideration and repeal of the rule before a specific date, the petition should so state and give reasons why action by that date is necessary.

(c) If a Coast Guard District Commander determines that a petition submitted under the provisions of paragraph (b) of this section contains adequate justification, the District Commander will initiate prompt action to repeal the order. If the District Commander determines that repeal of the order is not justified, the District Commander will issue prompt written notice of denial to the petitioner.

8. In § 177.07, paragraph (g)(3) is revised to read as follows:

§ 177.07 Other unsafe conditions.

* * * * *

(g) * * *

(3) Improper or inadequate operational or safety equipment, and set forth in an order issued by a District Commander according to the provisions of § 177.04.

Dated: June 27, 1995.

R. B. Helsel,

Acting Chief Counsel.

[FR Doc. 95–16146 Filed 6–29–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05–95–035]

RIN 2115–AE46

Special Local Regulations for Marine Events; Pony Penning Swim, Assateague Channel, Chincoteague, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.519.

SUMMARY: This notice implements 33 CFR 100.519 for the Pony Penning Swim, an annual event to be held in the Assateague Channel in Chincoteague, Virginia. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATE: The regulations in 33 CFR 100.519 are effective from 7 a.m. to 2 p.m., July 26, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204, or Commander, Coast Guard Group Eastern Shore (804) 336–2891.

Drafting Information. The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Fifth Coast Guard District, and CDR C.A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The Chincoteague Volunteer Fire-Company submitted an application to hold this year's Pony Penning Swim on July 26, 1995, in the Assateague Channel. Since this event is of the type contemplated by these regulations and the safety of the participants and spectators viewing this event will be enhanced, the regulations in 33 CFR 100.519 are implemented. The swim is an annual event held the last Wednesday in July. Ponies swim across Assateague Channel to Chincoteague, Virginia, and the following Friday swim back across the channel to Assateague Island. To provide for the safety of participants, spectators, and vessels transiting the area, the Coast Guard will restrict vessel movement in the regulated area during the time the ponies are in the water.

Date: June 15, 1995.

W.J. Ecker,

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

[FR Doc. 95–16153 Filed 6–29–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Parts 100 and 165

[CGD 95–051]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between January 1, 1995 and March 31, 1995, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between January 1, 1995 and March 31, 1995, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The complete text of these temporary regulations may be examined at, and is available on request, from executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Stephen J. Darmody, Executive Secretary, Marine Safety Council at (202) 267–1477 between the hours of 8 a.m. and 3 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsible to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage.

Special local regulations are issued to assure the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation.

Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register**. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. These safety zones, special local regulations and security zones have been exempted from review under E.O. 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period January 1, 1995 and March 31, 1995, unless otherwise indicated.

Alfred F. Bridgman, Jr.,

Acting Executive Secretary, Marine Safety Council.

QUARTERLY REPORT

Docket No.	Location	Type	Effective date
Baltimore 95–001	Quantico, VA	Safety Zone ...	2/26/95
Charleston 94–136	Cooper River, Charleston, SC	Safety Zone ...	1/5/95
Jacksonville 95–002	St. Johns River, FL	Safety Zone ...	2/11/95
LA/Long Beach 95–002	San Pedro Bay, CA	Safety Zone ...	3/14/95
Louisville 95–001	Ohio River M. 468.5 to 473.0	Safety Zone ...	1/18/95
San Francisco Bay 95–001	Monterey Bay, CA	Safety Zone ...	2/15/95
Wilmington 95–001	Atlantic ICW, Carolina Beach, NC	Safety Zone ...	2/15/95
01–95–005	Boston, MA	Safety Zone ...	1/31/95
01–95–015	Kennebec River, Bath, ME	Safety Zone ...	2/18/95
01–95–018	Sandy Hook Channel, NJ	Safety Zone ...	2/10/95
07–95–003	Hillsborough Bay, Tampa, FL	Special Local .	2/4/95
07–95–005	Augusta, GA	Special Local .	3/23/95
07–95–012	San Juan Bay, PR	Special Local .	3/26/95
13–94–048	Seattle, WA	Safety Zone ...	1/3/95
13–95–001	Bremerton to Queets, WA	Safety Zone ...	3/1/95
13–95–005	Queets to Port of Benton, WA	Safety Zone ...	3/2/95
13–95–006	Queets to Port of Benton, WA	Safety Zone ...	3/29/95
13–95–012	Bremerton to Queets, WA	Safety Zone ...	3/28/95

[FR Doc. 95–16142 Filed 6–29–95; 8:45 am]
BILLING CODE 4910–14–M

33 CFR Part 100

[CGD01–95–033]

Special Local Regulation: 1995 Special Olympics World Games, Long Island Sound, New Haven, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for the 1995 Special Olympics World Games. Maritime activities held as a part of the Special Olympics World Games will take place in the waters of Long Island Sound approaching New Haven, Connecticut. The dates for these maritime activities are July 1–July 10, 1995. This regulation is needed to allow the Special Olympics World Games Committee to hold the various maritime activities associated with the 1995 Special Olympics World Games without undue interference from public boating activity, and to protect boaters, spectators, and participants from the potential hazards associated with these events.

EFFECTIVE DATES: This regulation is effective from July 1–July 10, 1995, at times prescribed in paragraph (c) of § 100.35 T01–033.

FOR FURTHER INFORMATION CONTACT:

Lieutenant (Junior Grade) Benjamin M. Algeo, Chief, Boating Affairs Branch, First Coast Guard District, (617) 223–8311.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this temporary final rule are Lieutenant (Junior Grade) Benjamin M. Algeo, Project Manager, Chief, First Coast Guard District Boating Affairs Branch, and Captain William A. Cassels, Project Counsel, First Coast Guard District Legal Office.

Background and Purpose

The 1995 Special Olympics World Games are scheduled to be held in New Haven, Connecticut, from July 1–July 10, 1995. As part of the schedule of events, various maritime activities are planned for the participants and the public. The Special Olympics World Games Committee has submitted three marine event permit applications to the U.S. Coast Guard for approval. The maritime activities for which permits have been requested are to be held in the waters of Long Island Sound approaching New Haven, Connecticut. The activities include sailboat races, a Parade of Sail, and fireworks displays. Due to the inherent dangers of fireworks displays and the need for vessel control during the various races and the Parade of Sail, vessel traffic will be temporarily restricted to provide for the safety of the spectators and participants through the establishment of a regulated area in New Haven Harbor and Long Island Sound.

The Coast Guard is issuing an Operational Order (OPORD) to provide

for the effective coordination of the activities associated with the 1995 Special Olympics World Games. The specific tasking given to the various Coast Guard resources will be included in this OPORD.

Good cause exists for making this regulation effective in less than 30 days after **Federal Register** publication. The Special Olympic World Games (SOWG) represents a dynamic and complex planning challenge. Seven thousand athletes are expected to compete over nine days in 21 sporting events, many occurring on navigable waters of the U.S. Over 500,000 spectators are expected to attend. To adequately deal with the challenges posed by these unique circumstances, the Coast Guard has had to maintain extraordinary flexibility and responsiveness in its planning organization. This requirement for flexibility and responsiveness required publication of the NPRM after SOWG event plans had adequately developed. Also, SOWG events were only recently finalized to the point where the final rule could be issued. Delaying the effective date of this rule would be against the public interest. This rule is required to efficiently and effectively regulate the many waterfront and waterborne activities associated with the SOWG and thereby protect lives and property of participants and spectators.

Regulatory History

A Notice of Proposed Rulemaking was published for this regulation on 28 April 1995. One comment was received and no changes were made to the original proposal.

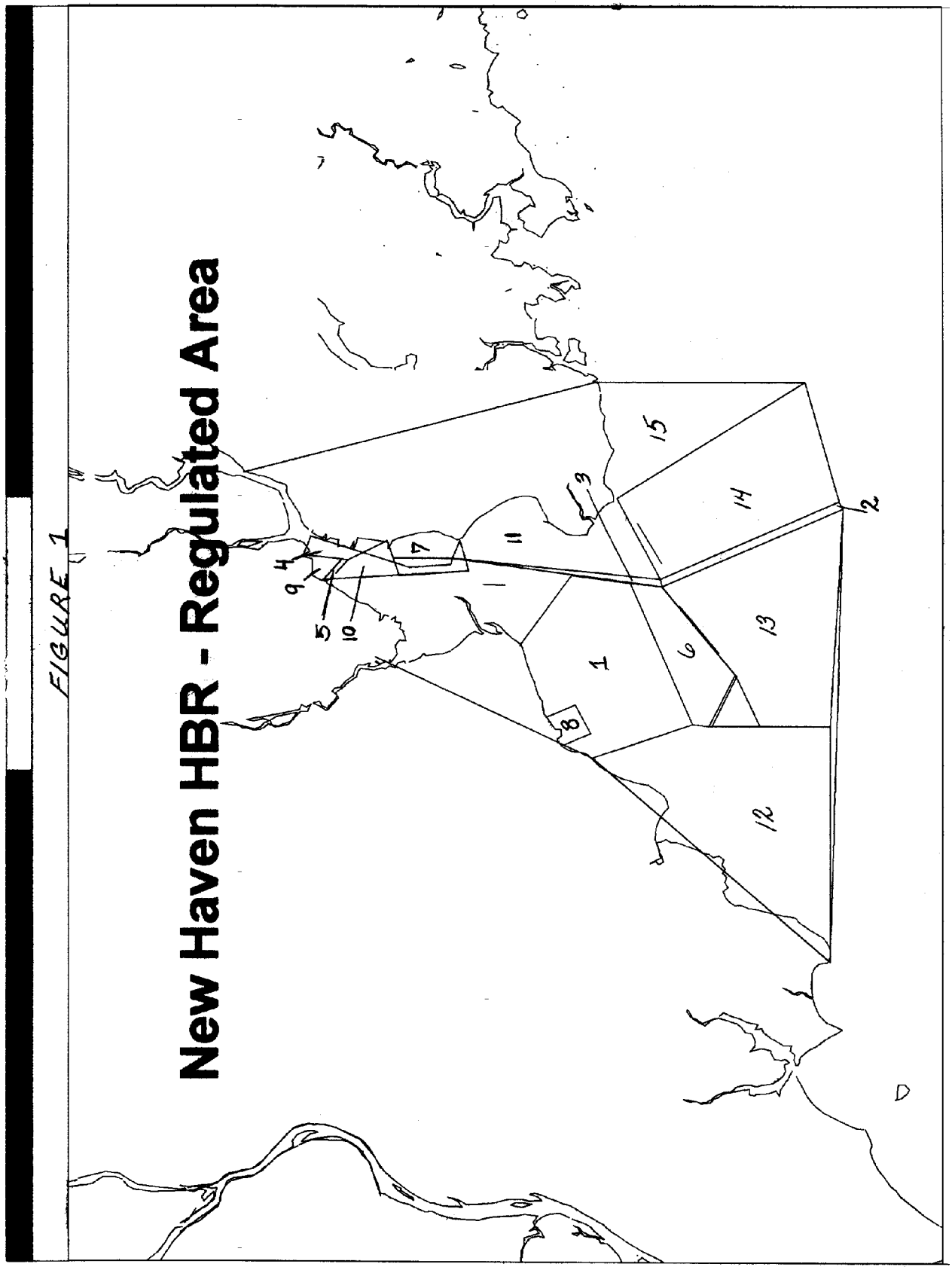
Discussion of Comments

The Coast Guard received one comment from a passenger vessel charter service company expressing objection to any restriction of movement within New Haven Harbor during the Special Olympics World Games. The charter service company responding was concerned with potential lost revenues due to the restrictions placed on vessel traffic within the harbor. The Coast Guard has considered this comment but does not believe any significant impact results from closing portions of New Haven Harbor due to its limited and temporary duration during the Special Olympics World Games. The restrictions placed on New Haven Harbor due to the fireworks displays will limit the distance into the channel the charter service company will be able to take passengers but it will not prevent the company from taking passengers to view the fireworks displays. The restrictions placed on New Haven Harbor due to the Parade of Sail will prevent the charter service company from taking passengers into the harbor for approximately eight hours. The restrictions placed on New Haven Harbor are necessary to ensure the safe conduct of each event taking place as part of the Special Olympics World Games. The Coast Guard believes the business realized by the charter service company will be significantly greater as a result of the City of New Haven's hosting the Special Olympics World Games. Therefore, the Coast Guard does not believe the temporary restrictions placed on the charter service's operations constitutes a significant impact.

Discussion of Proposed Amendments

The Coast Guard is establishing a special local regulation for specified waters of Long Island Sound and New Haven Harbor, New Haven, Connecticut. Because of the varied nature of the events planned during the Special Olympics World Games and the length of time over which the events are scheduled to run, the Coast Guard believes the most effective way to meet all safety, security and vessel control objectives is to establish one large regulated area, divided into 15 sectors. As events occur, individual sectors will open and close as the need arises. The following is a chartlet illustrating each sector.

BILLING CODE 4910–14–M



BILLING CODE 4910–14–M

Provisions will be made, when possible, to allow escort by Coast Guard patrol craft for vessels desiring to transit a closed sector of the regulated area. Special anchorage and viewing areas for spectator craft are also established. This regulation is needed to protect spectators and participants from the potential hazards associated with the fireworks displays, sailing races, Parade of Sail, and to provide for vessel control in a confined area.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that closed sectors will remain closed only for a limited duration, extensive advisories have been and will be made so that the affected maritime community may adjust its schedules accordingly, and the event schedule will allow commercial interests to coordinate their activities to minimize disruption to their enterprises.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their fields and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons discussed in the Regulatory Evaluation, 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 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.

Environment

The Coast Guard has considered the environmental impacts of this special local regulation as well as the marine events that will be part of the 1995 Special Olympics World Games. An Environmental Assessment (EA) was prepared for all Special Olympics World Games events for which Coast Guard Marine Event Permits will be issued. A Finding of No Significant Impact (FONSI) was made; a copy of the EA and FONSI statement are available in the docket. Under paragraph 2.B.2.e.34(h) of COMDTINST 16475.1B, this special local regulation is exempt from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

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

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

2. A temporary section, § 100.35T01–033, is added to read as follows:

§ 100.35T01–033 1995 Special Olympics World Games, New Haven, CT.

(a) *Regulated Area.* The regulated area includes all waters of New Haven Harbor within the following points:

Point	Latitude	Longitude	Reference
PT "P"	41°17′07.5″ N	072°56′15.8″ W	Kimberly Ave.
PT "E"	41°14′48.0″ N	072°57′54.0″ W	Prospect Beach.
PT "K"	41°12′14.9″ N	073°01′13.0″ W	Pond Point.
PT "Q"	41°12′06.5″ N	072°53′50.0″ W	NH Channel.
PT "R"	41°12′09.0″ N	072°53′43.0″ W	NH Channel.
PT "J"	41°12′31.0″ N	072°51′46.0″ W	Townsend Ledge.
PT "A2"	41°14′45.4″ N	072°51′46.0″ W	Bradford Cove.
PT "I"	41°18′32.0″ N	072°53′15.0″ W	Grand Ave Bridge.
(b) The following sectors have been designated within the Regulated Area:			
(1) *Sector 1:* Sailing Area. The Special Olympics World Games sailing competitions will be held in this area which includes all waters within the following points:			
PT "A"	41°15′35.0″ N	072°56′04.0″ W	Sail.
PT "B"	41°15′01.5″ N	072°54′55.2″ W	Sail.
PT "C"	41°14′23.5″ N	072°55′03.0″ W	Sail.
PT "D"	41°13′43.5″ N	072°57′21.0″ W	Sail.
PT "E"	41°14′48.0″ N	072°57′54.0″ W	Sail.
(2) *Sector 2:* The New Haven Entrance Channel includes all waters within the following points:			
PT "Q"	41°12′06.5″ N	072°53′50.0″ W	NH Channel.
PT "R"	41°12′09.0″ N	072°53′43.0″ W	NH Channel.
PT "S"	41°14′04.0″ N	072°54′59.0″ W	NH Channel.
PT "T"	41°14′03.0″ N	072°55′06.0″ W	Buoy 07.
(3) *Sector 3:* The Lighthouse (LH) Point Reach Area includes all waters within the following points:			
PT "S"	41°14′04.0″ N	072°54′59.0″ W	NH Channel.
PT "T"	41°14′03.0″ N	072°55′06.0″ W	Buoy 07.
PT "U"	41°16′18.0″ N	072°54′39.0″ W	LH Pt Reach.
PT "V"	41°16′19.0″ N	072°54′45.0″ W	Buoy 15.
(4) *Sector 4:* The New Haven Reach Area includes all waters within the following points:			
PT "W"	41°16′56.0″ N	072°54′39.0″ W	Buoy 20.
PT "U"	41°16′18.0″ N	072°54′39.0″ W	LH Pt Reach.

Point	Latitude	Longitude	Reference
PT "V"	41°16′19.0″ N	072°54′45.0″ W	Buoy 15.
PT "X"	41°16′45.5″ N	072°54′48.0″ W	Buoy 17.
PT "Y"	41°17′49.0″ N	072°54′18.0″ W	NH Reach.
PT "Z"	41°17′54.0″ N	072°54′36.0″ W	NH Reach.
(5) *Sector 5:* The New Haven Long Wharf Area includes all waters within the following points:			
PT "L"	41°17′33.0″ N	072°54′54.0″ W	Long Wharf.
PT "M"	41°17′25.0″ N	072°54′41.0″ W	Long Wharf.
PT "N"	41°17′29.0″ N	072°54′40.0″ W	Long Wharf.
PT "O"	41°17′41.0″ N	072°55′00.0″ W	Long Wharf.
(6) *Sector 6:* The Barge Staging Operation Area is where barges carrying fireworks will loiter prior to fireworks events. This sector will include all waters within the following points:			
PT "F"	41°13′33.0″ N	072°57′23.0″ W	West Break Wall.
PT "G"	41°13′16.0″ N	072°56′32.0″ W	West Break Wall.
PT "T"	41°14′03.0″ N	072°55′06.0″ W	Buoy 07.
PT "C"	41°14′23.5″ N	072°55′03.0″ W	Sail.
PT "D"	41°13′43.5″ N	072°57′21.0″ W	Sail.
(7) *Sector 7:* The Fireworks (Barge) Launch Area includes all waters within the following points:			
PT "F5"	41°16′13.0″ N	072°54′21.0″ W	Fireworks brg.
PT "F6"	41°16′07.5″ N	072°54′51.0″ W	Fireworks brg.
PT "F7"	41°16′52.0″ N	072°54′56.0″ W	Fireworks brg.
PT "F8"	41°17′00.0″ N	072°54′22.0″ W	Fireworks brg.
(8) *Sector 8:* The Fireworks Launch (Bradley PT, West Haven CT) Area includes all waters within the following points:			
PT "F1"	41°15′06.0″ N	072°57′41.0″ W	Fireworks land.
PT "F2"	41°14′49.0″ N	072°57′30.0″ W	Fireworks land.
PT "F3"	41°14′59.0″ N	072°57′02.0″ W	Fireworks land.
PT "F4"	41°15′17.0″ N	072°57′14.0″ W	Fireworks land.
(9) *Sector 9:* This Spectator Area includes all waters within the following points:			
PT "Z"	41°17′54.0″ N	072°54′36.0″ W	NH Reach.
PT "N"	41°17′29.0″ N	072°54′40.0″ W	Long Wharf.
PT "O"	41°17′41.0″ N	072°55′00.0″ W	Long Wharf.
(10) *Sector 10:* This Spectator Area includes all waters within the following points:			
PT "A"	41°17′54.0″ N	072°54′36.0″ W	NH Reach.
PT "B"	41°17′29.0″ N	072°54′40.0″ W	Long Wharf.
PT "V"	41°17′41.0″ N	072°55′00.0″ W	Long Wharf.
PT "F6"	41°16′07.5″ N	072°54′51.0″ W	Fireworks brg.
PT "F7"	41°16′52.0″ N	072°54′56.0″ W	Fireworks brg.
PT "F8"	41°17′00.0″ N	072°54′22.0″ W	Fireworks brg.
PT "M"	41°17′25.0″ N	072°54′41.0″ W	Long Wharf.
PT "L"	41°17′33.0″ N	072°54′54.0″ W	Long Wharf.
(11) *Sector 11:* This Spectator Area includes all waters within the following points:			
PT "H"	41°14′32.0″ N	072°53′40.0″ W	Morgan Point.
PT "S"	41°14′04.0″ N	072°54′59.0″ W	NH Channel.
PT "U"	41°16′18.0″ N	072°54′39.0″ W	LH Pt Reach.
PT "F5"	41°16′13.0″ N	072°54′21.0″ W	Fireworks brg.
Note: Sector 11 has numerous shallow water areas within its boundaries. Spectator craft using this section should proceed with extreme caution.			
(12) *Sector 12:* This Spectator Area includes all waters within the following points:			
PT "K"	41°12′14.9″ N	073°01′13.0″ W	Pond Point.
PT "A1"	41°12′14.9″ N	072°57′23.0″ W	37′ Depth.
PT "F"	41°13′33.0″ N	072°57′23.0″ W	West Break Wall.
PT "D"	41°13′43.5″ N	072°57′21.0″ W	Sail.
PT "E"	41°14′48.0″ N	072°57′54.0″ W	Prospect Beach.
(13) *Sector 13:* This Spectator Area includes all waters within the following points:			
PT "F"	41°13′33.0″ N	072°57′23.0″ W	West Break Wall.
PT "G"	41°13′16.0″ N	072°56′32.0″ W	West Break Wall.
PT "T"	41°14′03.0″ N	072°55′06.0″ W	Buoy 07.
PT "Q"	41°12′06.5″ N	072°53′50.0″ W	NH Channel.
PT "A1"	41°12′14.9″ N	072°57′23.0″ W	37′ Depth.
(14) *Sector 14:* This Spectator Area includes all waters within the following points:			
PT "H"	41°14′32.0″ N	072°53′40.0″ W	Morgan Point.
PT "J"	41°12′31.0″ N	072°51′46.0″ W	Townsend Ledge.
PT "R"	41°12′09.0″ N	072°53′43.0″ W	NH Channel.
PT "S"	41°14′04.0″ N	072°54′59.0″ W	NH Channel.
(15) *Sector 15:* This Spectator Area includes all waters within the following points:			
PT "A2"	41°14′45.4″ N	072°51′46.0″ W	Bradford Cove.
PT "J"	41°12′31.0″ N	072°51′46.0″ W	Townsend Ledge.
PT "H"	41°14′32.0″ N	072°53′40.0″ W	Morgan Point.

(c) *Enforcement Schedule.* The sectors in paragraph (b) of this section will be enforced as set out in Table 100.35T01–033.

Table 100.35T01–033—SECTOR ENFORCEMENT SCHEDULE

Date and sector	Time	Status
July 1, 1995:		
1	Midnight—7:59 a.m ...	Open.
1	8:00 a.m.—12:00 p.m	Closed.
1	12:01 p.m.—11:59 p.m.	Open.
2–15	All day	Open.
July 2, 1995:		
1	Midnight—9:59 a.m ...	Open.
1	10:00 a.m.—4:00 p.m	Closed.
1	4:01 p.m.—11:59 p.m	Open.
2	Midnight—2:59 p.m ...	Open.
2	3:00 p.m.—7:00 p.m .	Closed.
2	7:01 p.m.—11:59 p.m	Open.
3	Midnight—2:59 p.m ...	Open.
3	3:00 p.m.—7:00 p.m .	Closed.
3	7:01 p.m.—11:59 p.m	Open.
4	Midnight—2:59 p.m ...	Open.
4	3:00 p.m.—8:00 p.m .	Closed.
4	8:01 p.m.—11:59 p.m	Open.
5	Midnight—2:59 p.m ...	Open.
5	3:00 p.m.—5:00 p.m .	Closed.
5	5:01 p.m.—11:59 p.m	Open.
6–15	All day	Open.
July 3, 1995:		
1	Midnight—11:59 a.m .	Open.
1	12:00 noon—6:00 p.m	Closed.
1	6:01 p.m.—11:59 p.m	Open.
2–15	All day	Open.
July 4, 1995:		
1–2 ..	All day	Open.
3	Midnight—4:59 p.m ...	Open.
3	5:00 p.m.—6:00 p.m .	Closed.
3	6:01 p.m.—11:59 p.m	Open.
4–5 ..	All day	Open.
6	Midnight—4:59 a.m ...	Open.
6	5:00 a.m.—6:00 p.m .	Closed.
6	6:01 p.m.—11:59 p.m	Open.
7	Midnight—4:59 p.m ...	Open.
7	5:00 p.m.—11:00 p.m	Closed.
7	11:01 p.m.—11:59 p.m.	Open.
8	Midnight—7:59 p.m ...	Open.
8	8:00 p.m.—11:00 p.m	Closed.
8	11:01 p.m.—11:59 p.m.	Open.
9–15	All day	Open.
July 5, 1995:		
1	Midnight—11:59 a.m .	Open.
1	12:00 noon—6:00 p.m	Closed.
1	6:01 p.m.—11:59 p.m	Open.
2–15	All day	Open.
July 6, 1995:		
1	Midnight—11:59 a.m .	Open.
1	12:00 noon—6:00 p.m	Closed.
1	6:01 p.m.—11:59 p.m	Open.
2–15	All day	Open.
July 7, 1995:		
1	Midnight—11:59 a.m .	Open.
1	12:00 noon—6:00 p.m	Closed.
1	6:01 p.m.—11:59 p.m	Open.
2–15	All day	Open.

Table 100.35T01–033—SECTOR ENFORCEMENT SCHEDULE—Continued

Date and sector	Time	Status
July 8, 1995:		
1	Midnight—11:59 p.m .	Open.
1	12:00 noon—6:00 p.m	Closed.
1	6:01 p.m.—11:59 p.m	Open.
2–15	All day	Open.
July 9, 1995: All sectors.	All day	Open.
July 10, 1995: All sectors.	All day	Open.

(d) *Special local regulations.*

(1) Commander, U.S. Coast Guard Forces Long Island Sound reserves the right to delay, modify, or cancel any marine event within the regulated area as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in a closed sector of the regulated area unless participating in the event or unless authorized by the Coast Guard patrol commander. Spectator vessels are required to remain out of all closed sectors within the regulated area, in accordance with the established Sector Enforcement Schedule.

(3) Commercial towing vessels will not be allowed to operate in any closed sector unless expressly authorized by the patrol commander.

(4) Vessels awaiting passage through the regulated area will be required to wait outside established sectors when closed. A Coast Guard patrol vessel will be stationed along each boundary of the closed sectors. Vessels will not be allowed to transit, enter, cross, or remain in sectors when closed.

(5) All persons and vessels shall comply with the instructions of the Commander, U.S. Coast Guard Forces Long Island Sound or the designated on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately, then proceed as directed. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(e) *Effective period*. This section is effective from Thursday, July 1, 1995, to Monday, July 10, 1995, at the times indicated in paragraph (c) of this section unless otherwise specified in the Coast Guard Local Notice to Mariners and a notice in the **Federal Register**.

Dated: June 21, 1995.

J. L. Linnon,

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

[FR Doc. 95–16284 Filed 6–28–95; 3:39 pm]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD13–95–020]

Safety Zone Regulations; Kennewick Fourth of July Fireworks Display, Columbia River, Kennewick, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Independence Day Fireworks Display to be held on the Columbia River in Kennewick, Washington. This event will be held on Tuesday, July 4, 1995, from 10 p.m. (PDT) to 10:30 p.m. (PDT). The Coast Guard, through this action, intends to protect persons, facilities, and vessels from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on July 4, 1995, at 9 p.m. (PDT) and terminates on July 4, 1995 at 11 p.m. (PDT).

FOR FURTHER INFORMATION CONTACT: LTJG C.A. Roskam, c/o Captain of the Port, Portland, 6767 N. Basin Ave., Portland, Oregon 97217–3992, (503) 240–9338.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is necessary to ensure the safety of structures and vessels operating in the area of the fireworks display. Due to the complex planning and coordination involved, the sponsor of the event, the Kennewick Chamber of Commerce, was unable to provide the Coast Guard with the final details for the show until 30 days prior to the event. Therefore, sufficient time was not available to publish a proposed rule in advance of the event or to provide a delayed effective date. Following normal rulemaking procedures, in this case, would be impracticable.

Drafting Information

The drafters of this regulation are LTJG C.A. Roskam, project officer for the Captain of the Port, and LCDR J.C. Odell, project counsel, Thirteenth Coast Guard District Legal Office.

Background and Purpose

The event requiring this regulation is a fireworks display sponsored by the Kennewick Chamber of Commerce as part of the Fourth of July Celebration in Kennewick, Washington. The fireworks display will begin on July 4, 1995, at 10 p.m. This event may result in a large number of vessels congregating near the fireworks launching barge. To promote the safety of both the spectators and participants, a safety zone is being established on the waters of the Columbia River around the fireworks launching barge, and entry into this safety zone will be prohibited unless authorized by the Captain of the Port. This action is necessary due to the possibility of debris and unexploded fireworks falling into the Columbia River in the vicinity of the launching barge. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal agencies.

Regulatory Evaluation

This temporary 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 been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the safety zone will involve only one mile of the Columbia River and entry into this zone will be restricted for only two hours on the day of the event. The entities most likely to be affected by this action are commercial tug and barge operators on the Columbia River. Most of these entities are aware of the fireworks display and the safety zone, and they can schedule their transits accordingly. If it is safe to do so, the representative of the Captain of the Port assigned to enforce this safety zone may authorize commercial vessels to pass through the safety zone on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation above, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule and has concluded that under Section 2.B.2.c. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the rulemaking docket.

List of Subject in 33 CFR Part 165

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

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

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

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

2. A temporary § 165.T13–018 is added to read as follows:

§ 165.T13–018 Safety Zone: Columbia River, Kennewick, Washington.

(a) *Location.* The following area is a safety zone: All waters on the Columbia River from river mile 330.5 to river mile 331.5, Kennewick, Washington.

(b) *Definitions.* The designated representative of the Captain of The Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Portland, to act on his behalf. The following officers have or will be designated by the Captain of the Port: The Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone, and the Duty Officer at Coast Guard Group Portland, Oregon.

(c) *Regulations.* (1) In accordance with the general regulations in Section 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representatives.

(2) A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels or persons signalled shall stop and comply with the orders of the patrol vessels; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) *Effective Dates.* This section becomes effective on July 4, 1995, at 9 p.m. (PDT) and terminates on July 4, 1995, at 11 p.m. (PDT) unless sooner terminated by the Captain of the Port.

Dated: June 16, 1995.

C.E. Bills,

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

[FR Doc. 95–16147 Filed 6–29–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD13–95–023]

Safety Zone Regulations; Oaks Park Fourth of July Fireworks Show, Willamette River, Portland, OR

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Oaks park Fourth of July Fireworks Show to be held on the Willamette River in Portland, Oregon. The event will be held on Tuesday, July 4, 1995, from 10 p.m. (PDT) to 10:30 p.m. (PDT). The Coast Guard, through this action,

intends to protect persons, facilities, and vessels from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on July 4, 1995, at 9 p.m. (PDT) and terminates on July 4, 1995, at 11 p.m. (PDT).

FOR FURTHER INFORMATION CONTACT: LTJG C. A. Roskam, c/o Captain of the Port, Portland, 6767 N. Basin Ave, Portland, Oregon 97217–3992, (503) 240–9338.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is necessary to ensure the safety of structures and vessels operating in the area of the fireworks display. Due to the complex planning and coordination involved, the event sponsor, the Oaks Amusement Park, was unable to provide the Coast Guard with notice of the final details until 30 days prior to the date of the event. Therefore, sufficient time was not available to publish a proposed rule in advance of the event or to provide a delayed effective date. Following normal rulemaking procedures in this case would be impracticable.

Drafting Information

The drafters of this regulation are LTJG C.A. Roskam, Project Manger for the Captain of the Port, and LCDR J.C. Odell, Project Counsel, Thirteenth Coast Guard district Legal Office.

Background and Purposes

The event requiring this regulation is a fireworks display sponsored by the Oaks Amusement park. The fireworks display is scheduled to begin on July 4, 1995, at 10 p.m. (PDT). This event may result in a large number of vessels congregating near the fireworks launching barge. To promote the safety of both the spectators and participants, a safety zone is being established on the waters of the Willamette River around the fireworks launching barge, and entry into this safety zone is prohibited unless authorized by the Captain of the Port. This action is necessary due to the possibility of debris and unexploded fireworks falling into the Willamette River in the vicinity of the launching barge. This safety zone will be enforced by representative of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal agencies.

Regulatory Evaluation

This temporary 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 been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the entry into the safety zone will only be restricted for 2 hours on the day of the event. the entities most likely to be affected by this action are commercial tug and barge operators on the Willamette River. Most of these entities are aware of the fireworks display and the safety zone, and they can schedule their transits accordingly. If safe to do so, the representative of the Captain of the Port assigned to enforce this safety zone may authorize commercial vessels to pass through the safety zone on a case-to-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation above, the Coast Guard expects the impact of this final rule to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this final rule and has concluded that, under section 2.B.2.c. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the rulemaking docket.

List of Subjects in 33 CFR Part 165

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

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

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

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

2. A temporary section 165.T13–021 is added to read as follows:

§ 165.T13–021 Safety Zone; Willamette River, Portland, OR.

(a) *Location:* The following area is a safety zone: All waters of the Willamette River from river mile 15.5 to river mile 16.5, Portland, Oregon.

(b) *Definitions:* The designated representative of the Captain of The Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Portland, to act on his behalf. The following officers have or will be designated by the Captain of the Port: The Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone, and the Duty Officer at Coast Guard Group Portland, Oregon.

(c) *Regulations.* (1) In accordance with the general regulations in Section 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representatives.

(2) A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels or persons signalled shall stop and comply with the orders of the patrol vessels; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) *Effective Dates:* This section becomes effective on July 4, 1995, at 9 p.m. (PDT) and terminate on July 4, 1995, at 11 p.m. (PDT), unless sooner terminated by the Captain of the Port.

Dated: June 16, 1995.

C.E. Bills,

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

[FR Doc. 95–16145 Filed 6–29–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–95–072]

RIN 2115–AA97

Safety Zone: Larchmont Shore Club Centennial Fireworks, Long Island Sound, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Larchmont Shore Club Centennial fireworks program located on Long Island Sound, New York. The safety zone is in effect from 8:45 p.m. until 10 p.m. on Saturday, July 29, 1995, with a rain date of Sunday, July 30, 1995, at the same times. The safety zone temporarily closes all waters of Long Island Sound within a 330 yard radius of a fireworks barge anchored approximately 400 yards south of the Horseshoe Harbor entrance, Larchmont, New York.

EFFECTIVE DATE: This rule is effective from 8:45 p.m. until 10 p.m. on July 29, 1995, with a rain date of July 30, 1995, at the same times, unless extended or terminated sooner by the Captain of the Port New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York, (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG K. Messenger, Project Manager, Coast Guard Group, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM. Due to the date this application was received, there was insufficient time to draft and publish a notice of proposed rulemaking that allows for a reasonable comment period prior to the event. The delay encountered if normal rulemaking procedures were followed would effectively cancel this event. Cancellation of this event is contrary to the public interest.

Background and Purpose

Bay Fireworks, Inc. submitted an Application for Approval of Marine Event to hold a fireworks program in the waters of Long Island Sound. The fireworks program is being sponsored by the Larchmont Shore Club. This regulation establishes a temporary safety zone in all waters of Long Island Sound within a 330 yard radius of a fireworks barge anchored approximately 400 yards south of the Horseshoe Harbor entrance, Larchmont, New York, at or near 40°54′46″ N latitude, 073°44′51″ W longitude (NAD 1983). The safety zone is in effect from 8:45 p.m. until 10 p.m. on July 29, 1995, with a rain date of July 30, 1995, at the same times, unless extended or terminated sooner by the Captain of the Port New York. The safety zone prevents vessels from transiting this portion of Long Island Sound along its northern bank and is needed to protect mariners from the hazards associated with fireworks exploding in the area.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The safety zone closes a portion of Long Island Sound to vessel traffic from 8:45 p.m. until 10 p.m. on July 29, 1995, with a rain date of July 30, 1995, at the same times, unless extended or terminated sooner by the Captain of the Port New York. Although this regulation prevents traffic from transiting the area, the effect of this regulation is not significant for several reasons: the duration of the event is limited; the event is at a late hour; vessel traffic can transit safely to the south, east and west of the zone; and the extensive, advance advisories which will be made. Accordingly, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned or operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons set forth in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. Under the National Environmental Policy Act, the Approval of the Permit for Marine Event for this event is a federal action which is categorically excluded in accordance with section 2.B.2.e(35)(h) of Commandant Instruction M16475.1B, as amended, July 29, 1994. This fireworks

display lasts less than 30 minutes and is expected to involve less than 200 spectator craft.

List of Subjects in 33 CFR Part 165

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

Final Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

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

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

2. A temporary § 165.T01–072, is added to read as follows:

§ 165.T01–072 Safety Zone; Larchmont Shore Club Centennial Fireworks, Long Island Sound, New York.

(a) *Location.* The safety zone includes the waters of Long Island Sound within a 330 yard radius of a fireworks barge anchored approximately 400 yards south of the Horseshoe Harbor entrance, Larchmont, New York, at or near 40°54′46″ N latitude, 073°44′51″ W longitude (NAD 1983).

(b) *Effective period.* This section is in effect from 8:45 p.m. until 10 p.m. on July 29, 1995, with a rain date of July 30, 1995, at the same times, unless extended or terminated sooner by the Captain of the Port New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 20, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 95–16149 Filed 6–29–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–95–031]

RIN 2115–AA97

Safety Zone: Macy*s 1995 Fourth of July Fireworks, East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the annual Macy*s Fourth of July Fireworks program in the East River, New York. The safety zone is in effect on Tuesday, July 4, 1995, from 7 p.m. until 11 p.m. With the exception of certain vessels, which may enter designated portions of the safety zone, the East River will be temporarily closed to vessel transits. This safety zone is needed to protect mariners from the hazards associated with fireworks exploding in the area, and from the dangers associated with vessels operating with limited maneuverability in confined waters.

EFFECTIVE DATE: This rule is effective on July 4, 1995, from 7 p.m. until 11 p.m., unless extended or terminated by the Captain of the Port New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant R. Trabocchi, Chief, Planning and Readiness Division, Coast Guard Group/Captain of the Port New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LT R. Trabocchi, Project Manager, Coast Guard Group/Captain of the Port New York and LDCR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

On May 11, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (60 FR 25189). Interested persons were requested to submit comments on or before June 12, 1995. Seven letters commenting on the proposed rulemaking were received. A public hearing was not requested and one was not held.

Due to the NPRM comment period deemed necessary to give adequate public notice, there was insufficient time to publish this final rule 30 days prior to the event. Good cause exists for making this rule effective less than 30 days after publication. This is a nationally televised event in celebration of Independence Day. Any delay in making this rule effective would cause cancellation of this major event. Adequate measures are being taken to ensure mariners are made aware of this regulation. This rule will be locally published in the First Guard District's Local Notice to Mariners, electronically transmitted to major port interests, and announced via Safety Marine Information Broadcasts.

Background and Purpose

Macy*s notified the Coast Guard that it intends to sponsor its annual Independence Day fireworks program on July 4, 1995. Macy*s and The City of New York selected the East River as the location for this program. This regulation establishes a safety zone that will temporarily close the East River to vessel transits from 7 p.m. until 11 p.m. on July 4, 1995. This safety zone includes all waters of the East River, shore to shore, east of a line drawn from the Fireboat Station, at Battery Park, Manhattan, New York (40°42′16″ N latitude 074°01′07″W longitude (NAD 1983)) to the Governors Island Light at the northwest point of Governors Island, New York (40°41′35″ N latitude 074°01′11″ W longitude (NAD 1983)); north of a line drawn from the Brooklyn Battery Tunnel ventilator shaft at Governors Island, New York, to the northwest corner of Pier 6, Brooklyn, New York; south of a line drawn from Lawrence Point to Stony Point, and south of the Harlem River Footbridge. This safety zone also includes all waters of Newtown Creek, Brooklyn, New York, west of 073°57′37″ W longitude (NAD 1983); and, within the boundaries of the safety zone, all waters inward of the pierheads and bulkheads south of Roosevelt Island. There will be seven (7) fireworks barge configurations between the southern tip of Roosevelt Island and the southern boundaries of this safety zone. No vessel may enter the safety zone without permission of the Captain of the Port New York. Certain designated vessels may enter this safety zone. These designated vessels are defined as follows: (1) Vessels less than 20 meters (65.6 feet) in length, carrying persons for the sole purpose of viewing the fireworks display, may enter the safety zone and remain north of the southern tip of Roosevelt Island to view the fireworks. Such vessels may enter the safety zone and proceed to a position north of the southern tip of Roosevelt Island through the safety zone's northern boundaries at all times. Such vessels desiring to enter the safety zone through the safety zone's southern boundaries must be in a position north of the southern tip of Roosevelt Island prior to 7 p.m.; after 7 p.m. these vessels will only be permitted to enter the safety zone through the safety zone's

northern boundaries. (2) Vessels greater than 20 meters (65.6 feet) in length, carrying persons for the sole purpose of viewing the fireworks display, may enter the safety zone and take position at least 200 yards off the west bank of the East River between the Williamsburg Bridge and the chartered position of Buoy 18 (LLNR 27335). These vessels may enter the safety zone and proceed to this area between 7 p.m. and 8 p.m. only through the safety zone's southern boundaries and must remain in position until released by the Captain of the Port New York. (3) The Staten Island and Coast Guard ferries may continue services to their ferry slips at the Battery, Manhattan, New York, but will not be permitted to transit east of the Coast Guard ferry slip, also known as Slip 6, at the Battery, Manhattan, New York. On scene patrol personnel will monitor the number of designated vessels entering into the viewing areas of the zone. If it becomes apparent that the addition of designated vessels in either viewing area will create a safety hazard, the Patrol Commander may prevent additional vessels from entering into that viewing area.

Vessels not meeting this criteria have a significant potential to create a hazardous condition in this area of the East River, due in great part, to the extremely strong currents. Restricting vessels in the safety zone as described above will minimize the threat posed by vessels with limited maneuverability. Continuing ferry services in the southwestern portion of the safety zone will not create a hazard nor be threatened by the fireworks display because Vessel Traffic Service New York will monitor and control the transits of these ferries. Failure to allow these continued ferry services will have a negative impact on residents of Governors Island, New York, and those persons traveling to and from Manhattan at the end of the business holiday.

This safety zone covers the minimum area needed to ensure the protection of all vessels and fireworks handlers aboard the barges.

Discussion of Comments and Changes

Two comments opposed the provisions of the rule permitting vessels to enter designated areas of the East River in order to view the fireworks on the grounds that the congestion of vessels and changing tide would create an unsafe condition. The Coast Guard has carefully considered these comments in view of the tide and currents, expected number of spectator craft, and previous experience enforcing safety zones in the East River. The Coast Guard believes that this regulation as written, and as enforced by Coast Guard patrol craft, sufficiently provides for the safety of the event.

Three comments objected to the safety zone going into effect at 6 p.m., vice 8 p.m. as had been done last year, on the basis of financial hardship in having no cancel daytime commitments to allow evening charters and the burden of having passengers on board for an extended period of time. The Coast Guard considered these comments and has modified the final rule to specify, and make clear, the times and locations that designated vessels may enter into the safety zone in order to take position in the established viewing areas. The entry point for vessels over 20 meters is clarified. Vessels over 20 meters will be permitted to enter the safety zone and proceed to their preidentified viewing area only through the safety zone's southern boundaries. This is to avoid the unsafe and potentially hazardous situation that could arise should vessels over 20 meters attempt to transit through the viewing area preidentified for vessels less than 20 meters. Numerous vessels less than 20 meters are expected to take position in their preidentified viewing area located in the channels of the East River on either side of Roosevelt Island. The start time of the safety zone was also changed from 6 p.m. to 7 p.m. The Coast Guard is unable to make the zone effective at 8 p.m. due to the additional time required to accommodate movement and set up within the safety zone of the seven barge configurations participating in the event this year as opposed to the four barge configurations that participated last year. For the same reason, the Coast Guard is unable to project termination of the zone prior to 11 p.m. The numerous fireworks barges will need adequate time to secure equipment and fireworks on deck, and move from the center of the River to safe areas along the bank of the River before vessels can be permitted to transit again.

Two letters were received which did not comment on the NPRM itself, but requested permission from the Captain of the Port New York to enter and transit within the safety zone differently than that provided for in the NPRM. The Coast Guard will respond separately to these requests for entry.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting this area, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the extensive, advance advisories that will be made to allow the maritime community to schedule transits before and after the event; the fact that the event is taking place at a late hour on a federal holiday, and that vessel traffic is expected to be somewhat reduced due to this Federal holiday falling on a weekday not immediately proceeding or following a weekend. In addition, the Coast Guard has established two viewing areas to accommodate vessels desiring to take position within the safety zone to view the fireworks display. The 7 p.m. start time of the safety zone allows sufficient time for those desiring to engage in daytime fishing trips prior to arriving for the fireworks display to do so and, for those dinner cruise operators desiring to carry persons to view the fireworks display as part of that night's cruise, to board their guests at a reasonable hour. The Staten Island and Governors Island ferries will be permitted to continue its ferry services but may operate no further east than Coast Guard ferry slip 6, at the Battery, Manhattan, New York. Accordingly, the Coast Guard expects the impact of this regulation to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. An appropriate environmental analysis of the fireworks program will be conducted in conjunction with the marine event permitting process.

List of Subjects in 33 CFR Part 165

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

Final Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

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

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

2. A temporary section, 165.T01–031 is added to read as follows:

165.T01–031 Safety Zone; Macy's 1995 Fourth of July Fireworks, East River, New York.

(a) *Location.* This safety zone includes all waters of the East River, shore to shore, east of a line drawn from the Fireboat Station, at Battery Park, Manhattan, New York (40°42′16″N latitude 074°01′07″W longitude (NAD 1983)) to the Governors Island Light at the northwest point of Governors Island, New York (40°41′35″N latitude 074°01′11″W longitude (NAD 1983)); north of a line drawn from the Brooklyn Battery Tunnel ventilator shaft at Governors Island, New York, to the northwest corner of Pier 6, Brooklyn, New York; south of a line drawn from Lawrence Point to Stony Point, and south of the Harlem River Footbridge. This safety zone also includes all waters of Newtown Creek, Brooklyn, New York, west of 073°57′35″W longitude (NAD 1983); and, within the boundaries of the safety zone, all waters inward of the pierheads and bulkheads south of Roosevelt Island.

(b) *Effective period.* This section is effective from 7 p.m. until 11 p.m. on July 4, 1995, unless extended or terminated sooner by the Captain of the Port New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR section 165.23 apply to this safety zone.

(2) No vessels will be allowed to enter the safety zone without permission of the Captain of the Port New York.

(3) The following vessels may enter the safety zone:

(i) Vessels less than 20 meters (65.6 feet) in length, carrying persons for the sole purpose of viewing the fireworks display, may enter the safety zone and remain north of the southern tip of Roosevelt Island. Such vessels may enter the safety zone and proceed to a position north of the southern tip of Roosevelt Island through the safety zone's northern boundaries at all time. Such vessels desiring to enter the safety zone through the safety zone's southern boundaries must be in a position north of the southern tip of Roosevelt Island prior to 7 p.m.; after 7 p.m. these vessels will only be permitted to enter the safety zone through the safety zone's northern boundaries.

(ii) Vessels greater than 20 meters (65.6 feet) in length, carrying persons for the sole purpose of viewing the fireworks display, may enter the safety zone and take position at least 200 yards off the west bank of the East River between the Williamsburg Bridge and the charted position of Buoy 18 (LLNR 27335). These vessels may enter the safety zone and proceed to this area between 7 p.m. and 8 p.m. only through the safety zone's southern boundaries and must remain in position until released by the Captain of the Port New York.

(iii) The Staten Island and Coast Guard ferries may continue services to their ferry slips at the Battery, Manhattan, New York, but will not be permitted to transit east of the Coast Guard ferry slip, also known as Slip 6, at the Battery, Manhattan, New York.

(4) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 21, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port of New York.

[FR Doc. 95–16148 Filed 6–29–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD13–95–029]

RIN 2115–AA97

Safety Zone Regulations; Port Townsend Bay Fourth of July Jefferson Day Fireworks Display, Port Townsend, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Fourth of July Jefferson Day Fireworks Display in Port Townsend, Washington. This event will be held on Tuesday, July 4, 1995, from 10 p.m. (PDT) to 12 midnight (PDT) on the waters of Port Townsend Bay, Washington. This safety zone is needed to protect persons, facilities and vessels from safety hazards associated with the fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective July 4, 1995, from 10 p.m. (PDT) to 12 midnight (PDT), unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT K.M. Paquette, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective less than 30 days after *Federal Regulation* publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is necessary to ensure the safety of structures and vessels operating in the area of the fireworks display. If normal notice procedures were followed, this rule would not become effective until after the date of the event. For this reason, following

normal rulemaking procedures in this case would be impracticable.

Drafting Information

The principal persons involved in drafting this document are LT Kristy Paquette, Project Manager, and LCDR John C. Odell, Project Counsel, Thirteenth Coast Guard District Legal Office.

Background and Purpose

The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event. The fireworks display is conducted from a barge located on the waters of Port Townsend Bay, Port Townsend, Washington.

During the fireworks display, spectator vessels may attempt to approach the fireworks launching site at close range. If allowed to do so, these vessels and the persons onboard them may be exposed to potential damage, fire and personal injury from sparks, falling debris, and unexploded fireworks.

In order to promote the safety of life and property on the navigable waters during this event, the Coast Guard is establishing a safety zone around the fireworks launching barge in order to keep both the spectators and participants away from the fireworks launching barge during the fireworks display. Entry into this zone will be prohibited unless authorized by the Captain of the Port. This safety zone will be enforced by representatives of the Captain of the Port Puget Sound, Seattle, Washington. The Captain of the Port may be assisted by other federal agencies.

Regulatory Evaluation

This temporary 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 been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedure of DOT is unnecessary. The safety zone established by this regulation encompasses less than a half of one square nautical mile on Port Townsend Bay. Entry into the safety zone will be restricted for less than three hours on the day of the event. Therefore, these restrictions will have little effect on maritime commerce in the area. If safe to do so, the representative of the Captain of the Port assigned to enforce this safety zone may authorize commercial vessels to pass through the safety zone on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation above, the Coast Guard expects the impact on small entities to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environmental Assessment

The Coast Guard considered the environmental impact of this action and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59 FR 38654; July 29, 1994), this rule is categorically excluded from further environmental documentation. A categorical exclusion determination is available in the docket for inspection or coping were indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

Final Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR 165 as follows:

PART 165—[AMENDED]

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

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

2. A temporary section 165.T13–027 is added to read as follows:

§ 165.T13–027 Port Townsend Bay, Port Townsend, WA.

(a) *Location.* The following area is a safety zone: All portions of Port Townsend Bay within the following area: a circle with a radius of 700 yards extending out from the tug and fireworks barge located at latitude 48°06′20″ N; longitude 122°44′38″ W. This safety zone resembles a circle centered around the barge from which the fireworks demonstration will be launched. [Datum: NAD 1983].

(b) *Effective dates.* This section is effective on July 4, 1995, from 10 p.m. (PDT) to 12 midnight (PDT) unless sooner terminated by the Captain of the Port.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port, Puget Sound, Seattle, WA or his designated representative. Designated representatives may include any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Puget Sound, to act on his behalf.

Dated: June 27, 1995.

R.K. Softye,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 95–16144 Filed 6–29–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD13–95–019]

Safety Zone Regulations; Fort Vancouver Fourth of July Fireworks Display, Columbia River, Vancouver, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Fort Vancouver Fourth of July Fireworks Display to be held on the Columbia

River in Vancouver, Washington. This event will be held on Tuesday, July 4, 1995, from 10 p.m. (PDT) to 10:30 p.m. (PDT). The Coast Guard, through this action, intends to protect persons, facilities, and vessels from safety hazards associated with a fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on July 4, 1995, at 9 p.m. (PDT) and terminates on July 4, 1995 at 11 p.m. (PDT).

FOR FURTHER INFORMATION CONTACT: LTJG C.A. Roskam, c/o Captain of the Port Portland, 6767 N. Basin Ave, Portland, Oregon 97217–3992, (503) 240–9338.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is necessary to ensure the safety of structures and vessels operating in the area of the fireworks display. Due to the complex planning and coordination involved, the sponsor of the event, Fort Vancouver Fourth of July Committee, Inc., was unable to provide the Coast Guard with the final details for the show until 30 days prior to the event. Therefore, sufficient time was not available to publish a proposed rule in advance of the event or to provide a delayed effective date. Following normal rulemaking procedures in this case would be impracticable.

Drafting Information

The drafters of this regulation are LTJG C.A. Roskam, project officer for the Captain of the Port, and LCDR J.C. Odell, project counsel, Thirteenth Coast Guard District Legal Office.

Background and Purpose

The event requiring this regulation is a fireworks display sponsored by the Fort Vancouver Fourth of July Committee, Inc. as part of the Fourth of July celebration in Vancouver, Washington. The fireworks display will begin on July 4, 1995, at 10 p.m. (PDT). This event may result in a large number of vessels congregating near the fireworks launching barge. To promote the safety of both the spectators and participants, a safety zone is being established on the waters of the Columbia River around the fireworks launching barge, and entry into this safety zone will be prohibited unless authorized by the Captain of the Port. This action is necessary due to the possibility of debris and unexploded fireworks falling into the Columbia River in the vicinity of the launching barge. This safety zone will be enforced by representatives of the Captain of the Port Portland, Oregon. The Captain of the Port may be assisted by other federal agencies.

Regulatory Evaluation

This temporary 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 been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the safety zone will involve less than one mile of the Columbia River and entry into this zone will be restricted for only two hours on the day of the event. The entities most likely to be affected by this action are commercial tug and barge operators of the Columbia River. Most of these entities are aware of the fireworks display and the safety zone, and they can schedule their transits accordingly. If it is safe to do so, the representative of the Captain of the Port assigned to enforce this safety zone may authorize commercial vessels to pass through the safety zone on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation above, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule and has concluded that under Section 2.B.2.c. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the rulemaking docket.

List of Subjects in 33 CFR Part 165

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

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends part 165 of title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

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

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

2. A temporary section 165.T13–017 is added to read as follows:

§ 165.T13–017 Safety Zone: Columbia River, Vancouver, Washington.

(a) *Location.* The following area is a safety zone: All waters of the Columbia River bordered by the Washington shore, the Interstate 5 Bridge, and a line drawn from the Interstate 5 Bridge at position 45°37′03″ N, 122°40′32″ W running easterly to position 45°36′28″ N, 122°38′35″ W, and then running due north to the Washington shore at Ryan Point at position 45°36′42″ N, 122°38′35″ W.

(b) *Definitions.* The designated representative of the Captain of The Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Portland, to act on his behalf. The following officers have or will be

designated by the Captain of the Port: The Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone, and the Duty Officer at Coast Guard Group Portland, Oregon.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representatives.

(2) A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels or persons signalled shall stop and comply with the orders to the patrol vessels; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) *Effective Date.* This section is effective on July 4, 1995, at 9 p.m. (PDT) and terminates on July 4, 1995, at 11 p.m. (PDT), unless sooner terminated by the Captain of the Port.

Dated: June 26, 1995.

C.E. Bills,

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

[FR Doc. 95–16152 Filed 6–29–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD13–95–021]

Safety Zone Regulations; Portland Blues Festival Fireworks Display, Willamette River, Portland, OR

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Portland Blues Festival Fireworks Display which is scheduled to be held on the Willamette River in Portland, Oregon. This event will be held on July 4, 1995, from 9:45 p.m. (PDT) to 10:05 p.m. (PDT). The Coast Guard, through this action, intends to protect persons, facilities, and vessels from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on July 4, 1995, at 8 p.m. (PDT) and terminates on July 4, 1995, at 11 p.m. (PDT).

FOR FURTHER INFORMATION CONTACT: LTJG C. A. Roskam, c/o Captain of the Port Portland, 6767 N. Basin Ave, Portland, Oregon 97217–3992, (503) 240–9338.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is necessary to ensure the safety of structures and vessels operating in the area of the fireworks display. Due to the complex planning and coordination involved, the event sponsor, the Oregon Food Bank, was unable to provide the Coast Guard with notice of the final details until 30 days prior to the date of the event. Therefore, sufficient time was not available to publish a proposed rule in advance of the event or to provide a delayed effective date. Following normal rulemaking procedures in this case would be impracticable.

Drafting Information

The principal persons involved in drafting this document are LTJG C. A. Roskam, Project Officer for the Captain of the Port and LCDR J. C. Odell, Project Counsel, Thirteenth Coast Guard District Legal Office.

Background and Purpose

The event requiring this regulation is a fireworks display sponsored by the Oregon Food Bank as part of the Portland Blues Festival in the Portland, Oregon, area. The fireworks display is scheduled to begin on July 4, 1995, at 9:45 p.m. (PDT). This event may result in a large number of vessels congregating near the fireworks launching barge. To promote the safety of both the spectators and participants, a safety zone is being established on the waters of the Willamette River around the fireworks launching barge, and entry into this safety zone is prohibited unless authorized by the Captain of the Port. This action is necessary due to the possibility of debris and unexploded fireworks falling into the Willamette River in the vicinity of the launching barge. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal agencies.

Regulatory Evaluation

This temporary 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 been exempted from review by the Office of Management and Budget under this order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the entry into the safety zone will only be restricted for 2 hours on the day of the event. The entities most likely to be affected by this action are commercial tug and barge operators on the Willamette River. Most of these entities are aware of the fireworks display and the safety zone, and they can schedule their transits accordingly. If safe to do so, the representative of the Captain of the Port assigned to enforce this safety zone may authorize commercial vessels to pass through the safety zone on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation above, the Coast Guard expects the impact of this final rule to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final 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 it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this final rule and has concluded that, under section 2.B.2.c. of Commandant Instruction

M16475.1B, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

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

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends part 165 of title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

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

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

2. A temporary § 165.T13–019 is added to read as follows:

§ 165.T13–019 Safety Zone; Willamette River, Portland, OR.

(a) *Location:* The following area is a safety zone: All waters on the Willamette River between the Hawthorne and Marquam Bridges from river mile 13.1 to river mile 13.5, Portland, Oregon.

(b) *Definitions:* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Portland, to act on his behalf. The following officers have or will be designated by the Captain of the Port: The Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone, and the Duty Officer at Coast Guard Group Portland, Oregon.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representatives.

(2) A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels or persons signalled shall stop and comply with the orders of the patrol vessels; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) *Effective Dates:* This section becomes effective on July 4, 1995, at 8 p.m. (PDT) and terminate on July 4, 1995, at 11 p.m. (PDT), unless sooner terminated by the Captain of the Port.

Dated: June 16, 1995.

C.E. Bills,

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

[FR Doc. 95–16143 Filed 6–29–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

34 CFR Part 674

RIN 1840 AB71

Federal Perkins Loan Program

AGENCY: Department of Education.

ACTION: Final regulations—Correction.

On November 30, 1994 the Secretary published in the **Federal Register** final regulations for the Federal Perkins Loan Program (59 FR 61392). These regulations correct the November 30 regulations to read as follows—

1. On page 61407, item 8, in the amendatory language after, ''and (i)'', add ''and revising the authority citation''.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia R. Ross, Federal Perkins Loan Program, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 4018, ROB–3), Washington, D.C. 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 27, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–16208 Filed 6–29–95; 8:45 am]

BILLING CODE 4000–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201, 202, 203, 204, 211 and 255

[Docket No. 95–6]

Copyright, Freedom of Information Act, Mask Works, Privacy Act, Registration, and Royalties

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule, amendments.

SUMMARY: This amendment rule will update Office regulations to reflect organizational changes and correct errors in section citations and misspellings, grammatical errors, and other non-substantive errors. We take this action to make our regulations accurate and thereby not misinform anyone who uses them.

EFFECTIVE DATE: June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Copyright Office regulations are being updated to reflect the current organizational structure of the Office by amending §§ 202.19(b)(1)(ii), 202.19(b)(1)(iii)(B), 202.19(e)(3), 202.22(d)(6)(iii), 204.4(a), 204.5a and 204.7(a) to include current titles and section names, and § 203.3 to include the entire current organization of the Office. Fees that were incorrectly stated are amended in § 202.23(e) (1) and (2).

Numbering for parts of a section and numbers within a section referring to another section are being corrected in §§ 201.1(b), 201.11(g)(3)(iii)(B), 201.11(g)(3)(v), 201.17(b)(2), 201.17(c)(1), 201.17(g), 255.3(h)(2), and 255.3(h)(3).

Section 201.16 concerning coin-operated phonorecord players is deleted in its entirety. It is duplicated in Part 254. Section 202.20(b)(2)(iii) is amended in its entirety to conform with § 202.20(c)(2)(xv), which pertains to the same matter.

The following sections are amended to correct misspelled words, incorrect symbols, or improper punctuation: §§ 201.5(b)(2)(iv), 201.5(c)(1), 201.10(d)(1), 201.11(f), 201.11(g)(3)(iii)(B), 201.11(g)(3)(vi), 201.15(c), 201.17(h)(4)(iii), 201.17(h)(8), 201.26(b)(2), 202.2(b)(1), 202.3(b)(5)(i)(D), 211.5(a), 211.6(b)(1), and § A.2(i) of Appendix A to Part 202. Section 201.10(d)(3) is amended by removing a reference to a section which no longer exists.

List of Subjects

37 CFR Part 201

Copyright; General Provisions.

37 CFR Part 202

Copyright; Registration.

37 CFR Part 203

Freedom of Information Act.

37 CFR Part 204

Privacy Act.

37 CFR Part 211

Mask Work Protection.

37 CFR Part 255

Royalties; Sound Recordings.

Final Rule

In consideration of the foregoing, parts 201, 202, 203, 204, 211, and 255 of 37 CFR chapter II are amended in the manner set forth below:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 is revised to read as follows:

Authority: 17 U.S.C. 702.

§ 201.1 [Amended]

2. Section 201.1(b) is amended by removing ''(17 U.S.C. 111, 115, 116, and 118)'' and adding in its place ''(17 U.S.C. 111, 115, 118, and 119)''.

§ 201.5 [Amended]

3. Section 201.5(b)(2)(iv) is amended by removing the period after the word claim in the second sentence and adding a comma in its place.

§ 201.5 [Amended]

4. Section 201.5(c)(1) is amended by adding a comma after Copyright Office and by removing the period at the end of paragraph (iii) and adding a semi-colon.

§ 201.7 [Amended]

5. Section 201.7(c)(4)(ii) is amended by adding the phrase ''published before March 1, 1989,'' after the word ''work''.

§ 201.10 [Amended]

6. Section 201.10(d)(1) is amended by removing one of the two phrases ''notice of''.

7. Section 201.10(d)(3) is amended by removing the phrase ''as defined by section 116(e)(3) of title 17, U.S.C.''.

§ 201.11 [Amended]

8. Section 201.11(f) is amended by removing the word ''paument'' and adding the word ''payment''.

§ 201.11 [Amended]

9. Section 201.11(g)(3)(iii)(B) is amended by removing the word ''ttle'' and adding the word ''title'' and by removing ''(e)(14)'' and adding ''(e)(9).''

§ 201.11 [Amended]

10. Section 201.11(g)(3)(v) is amended by removing ''(e)(10)'' and adding ''(e)(9)''.

§ 201.11 [Amended]

11. Section 201.11(g)(3)(vi) is amended by removing the word ''owned'' and adding the word ''owner''.

§ 201.15 [Amended]

12. Section 201.15(c) is amended by removing the letter ''k'' from the word ''ksubmitting''.

§ 201.16 [Amended]

13. Section 201.16 is removed and reserved.

§ 201.17 [Amended]

14. Section 201.17(b)(2) is amended by redesignating ''(A)'' and ''(B)'' in the last sentence as ''(i)'' and ''(ii)'' respectively.

§ 201.17 [Amended]

15. Section 201.17(c)(1) is amended by removing ''(2)'' after 111(d) and adding ''(1)''.

§ 201.17 [Amended]

16. Section 201.17(g), introductory text, is amended by removing ''(2)'' after 111(d) and adding ''(1)''.

§ 201.17 [Amended]

17. Section 201.17(h)(4)(iii) is amended by removing ''in'' after the word return and adding ''it''.

§ 201.17 [Amended]

18. Section 201.17(h)(8) is amended by removing the word ''expended'' and adding the word ''expanded''.

§ 201.26 [Amended]

19. Section 201.26(b)(2) is amended by removing the word ''documented'' and adding the word ''document''.

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

20. The authority citation for part 202 is revised to read as follows:

Authority: 17 U.S.C. 702.

§ 202.2 [Amended]

21. Section 202.2(b)(1) is amended by is amended by removing the symbol ''q'' and adding the symbol '' ''.

§ 202.3 [Amended]

22. Section 202.3(b)(5)(i)(D) is amended by removing the word ''pyblished'' and adding the word ''published''.

§ 202.18 [Amended]

23. Section 202.18 is removed and reserved.

§ 202.19 [Amended]

24. Section 202.19(b)(1)(ii) and 202.19(b)(1)(iii)(B) are amended by removing ''Deposits and Acquisitions Division of the Copyright Office'' and adding ''Copyright Acquisitions Division''.

§ 202.19 [Amended]

25. Section 202.19(e)(3) is amended by removing ''Chief, Deposits and Acquisitions Division of the Copyright Office'' and adding ''Chief, Examining Division''.

§ 202.20 [Amended]

26. Section 202.20(b)(2)(iii) is amended by removing the entire text after the heading and adding ''In the case of a published contribution to a collective work, a ''complete'' copy is one complete copy of the best edition of the entire collective work, the complete section containing the contribution if published in a newspaper, the contribution cut from the paper in which it appeared, or a photocopy of the contribution itself as it was published in the collective work''.

§ 202.22 [Amended]

27. Section 202.22(d)(6)(iii) is amended by removing ''Chief, Acquisitions and Processing Division of the Copyright Office'' and adding ''Copyright Acquisitions Division''.

§ 202.23 [Amended]

28. Section 202.23(e)(1) and (2) are amended by removing ''$135.00'' and adding ''$270.00''.

Appendix A to Part 202 [Amended]

29. Appendix A to part 202 is amended in section A.2(i) by removing the word ''mechanical'' and adding the word ''mechanical''.

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

30. The authority citation for part 203 is revised to read as follows:

Authority: 17 U.S.C. 702; and 5 U.S.C. 552(a)(1).

31. Section 203.3 is revised to read as follows:

§ 203.3 Organization.

(a) *In General.* The Office of the Register exercises overall direction of the work of the Copyright Office, including work in conjunction with copyright legislation and promulgation of copyright regulations. The Office of the Register of Copyrights includes the legal and administrative, and automation staff.

(b) The Associate Register of Copyright for Operations has oversight of the operating divisions of the Copyright Office. The operating divisions are:

(1) The Receiving and Processing Division, which receives incoming materials, dispatches outgoing materials

and establishes control over fiscal accounts.

(20) The Examining Division, which examines all applications and material presented to the Copyright Office for registration of original and renewal copyright claims, and which determines whether the materials deposited constitute coyrightable subject matter and whether the other legal and formal requirements of Title 17 have been met.

(3) The Cataloging Division, which prepares the bibliographic description of all copyrighted works registered in the Copyright Office, including the recording of legal facts of copyright pertaining to each work, in an on-line database in which copyright records can be searched; and which also examines and catalogs in an on-line database documents submitted for recordation.

(4) The Information and Reference Division, which provides a national copyright information service through the Public Information Office, educates the public on the copyright law, issues and distributes information materials, responds to reference requests regarding copyright matters, prepares search reports based upon copyright records, certifies copies of legal documents concerned with copyright, and maintains liaison with the United States Customs Service, the Department of the Treasury, and the United States Postal Service on certain matters. The Information and Reference Division also develops, services, stores, and preserves the official records and catalogs of the Copyright Office, including applications for registration, historical records, and materials deposited for copyright registration that are not selected by the Library of Congress for addition to its collections.

(5) The Licensing Division, which implements the sections of the Copyright Act dealing with secondary transmissions of radio and television programs, compulsory licenses for making and distributing phonorecords of nondramatic musical, pictorial, graphic, and sculptural works in connection with noncommercial broadcasting. The Licensing Division is in charge of collecting the statutory royalties and distributing these royalties based on either a voluntary agreement among the interested parties or a determination of the Copyright Arbitration Royalty Panels.

(c) The Copyright General Counsel is a principal legal officer of the Office. The General Counsel has overall supervisory responsibility for the legal staff and primary responsibility for providing liaison on legal matters between the Office and the Congress, the Department of Justice and other agencies of Government, the courts, the legal community, and a wide range of interests affected by the copyright law. The Copyright General Counsel has responsibility for overseeing all functions related to the administration of the compulsory licenses including oversight of the Copyright Arbitration Royalty Panels.

(d) The Associate Register of Copyrights for International Affairs and Policy is a principal legal adviser to the Register with primary responsibility for the international aspects of copyright protection, as well as legislative and policy matters.

(e) The Associate Register of Copyrights for National Programs is primarily responsible for initiating, planning, developing, and implementing projects and activities related to the Copyright Office electronic registration, recordations, and deposit system (CORDS).

(f) The Office has no field organization.

(g) The Office is located in The James Madison Memorial Building of the Library of Congress, 1st and Independence Avenue, SE., Washington, DC. 20559. The Public Information Office is located in Room LM–401. Its hours are 8:30 a.m. to 5 p.m., Monday through Friday except legal holidays. The phone number of the Public Information Office is (202) 707–3000. Informational material regarding the copyright law, the registration process, fees, and related information about the Copyright Office and its functions may be obtained free of charge from the Public Information Office upon request.

(h) All Copyright Office forms may be obtained free of charge from the Public Information Office or by calling the Copyright Office Hotline anytime day or night at (202) 707–9100.

(i) Copyright Office records in machine-readable form cataloged from January 1, 1978, to the present including registration information and recorded documents are now available over Internet. Most Copyright Office circulars and all regulations and announcements are also available over Internet.

PART 204—PRIVACY ACT: POLICIES AND PROCEDURES

32. The authority citation for part 204 is revised to read as follows:

Authority: 17 U.S.C. 702; and 5 U.S.C. 552(a).

§ 204.4 [Amended]

33. Section 204.4(a) is amended by removing ''Information and Publishing Section'' and adding ''Information Section.''

§§ 204.5 and 204.7 [Amended]

34. Sections 204.5(a) and 204.7(a) are amended by removing ''Information and Publications Section'' and adding ''Information Section''.

PART 211—MASK WORK PROTECTION

35. The authority citation for part 211 continues to read as follows:

Authority: 17 U.S.C. 702 and 908.

§ 211.5 [Amended]

36. Section 211.5(a) is amended by removing the work ''proscribes'' and adding the word ''prescribes''.

§ 211.6 [Amended]

37. Section 211.6(b)(1) is amended by removing the phrase ''the symbol '*M*', or the symbol '\' '' and adding the phrase ''the symbol 'M' or the symbol ' ' ''.

PART 255—ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

38. The authority citation for part 255 continues to read:

Authority: 17 U.S.C. 801(b)(1) and 803.

§ 255.3 [Amended]

39. Section 255.3(h)(2) is amended by removing ''(g)(1)'' in both places it appears and adding ''(h)(1)'' in both places.

§ 255.3 [Amended]

40. Section 255.3(h)(3) is amended by removing ''(g)'' and adding ''(h)''.

Dated: June 27, 1995.

Marilyn J. Kretsinger,

Acting General Counsel.

[FR Doc. 95–16120 Filed 6–29–95; 8:45 am]

BILLING CODE 1410–30–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[OPPTS–00172; FRL–4964–4]

Technical Amendments to OMB Approval Numbers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the list of OMB control numbers which are issued under the Paperwork Reduction Act for regulations with information collection requirements. This is a technical amendment which only updates the table to include any approvals that have published in the **Federal Register** since

July 1, 1994, or to delete any approval that have been terminated since that date.

DATES: The effective date of this rule is on June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Susan H. Hazen, Director, Environmental Assistance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–2740, internet e-mail address:TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

This document will consolidate the OMB control numbers for various regulations issued under the Federal Insecticide, Fungicide and Rodenticide Act, the Toxic Substances Control Act, and section 313 of the Emergency Planning and Community Right-to-Know Act that have published since July 1, 1994.

The information collection requests and the OMB control numbers included in this technical amendment were previously subject to public notice and comment prior to OMB approval. As such, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 533) to issue this technical amendment without prior notice and comment.

List of Subjects in 40 CFR Part 9

Information collection request, Reporting and recordkeeping requirements.

Dated: June 26, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I, part 9 is amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

§ 9.1 [Amended]

2. In § 9.1 the table is amended as follows:

a. Under the heading ''Reporting and Recordkeeping Requirements'', by removing the entries ''part 704, subpart C'' and the entry ''part 704, subpart D'' in their entirety.

b. Under the heading ''Inventory Reporting Regulations'' by Removing the entry ''part 710, subpart B,'' and adding ''part 710'' in place thereof.

c. Under the heading ''Pesticide Registration and Classification Procedures,'' remove the entry for § 152.142.

d. Remove the heading ''Registration Policies and Interpretations,'' and the entry ''part 153, subpart D''.

e. Under the heading ''Significant New Uses of Chemical Substances,'' by removing the entries §§ 721.2225, 721.3240, 721.3254, 721.3367, 721.3580, 721.5660, 721.6193, 721.8125, 721.9668, and 721.9760, and by adding the following entries in section number order:

40 CFR citation	OMB control No.
Significant New Uses of Chemical Substances	
* * * * *	
721.642	2070–0012
* * * * *	
721.825	2070–0012
* * * * *	
721.1187	2070–0012
* * * * *	
721.1755	2070–0012
* * * * *	
721.1769	2070–0012
* * * * *	
721.1907	2070–0012
* * * * *	
721.2085	2070–0012
* * * * *	
721.2088	2070–0012
* * * * *	
721.2410	2070–0012
* * * * *	
721.3028	2070–0012
* * * * *	
721.3034	2070–0012
* * * * *	
721.3437	2070–0012
* * * * *	
721.3627	2070–0012
* * * * *	
721.3790	2070–0012
* * * * *	
721.3815	2070–0012
* * * * *	
721.4110	2070–0012
* * * * *	
721.4470	2070–0012
* * * * *	
721.4594	2070–0012
* * * * *	
721.5540	2070–0012
* * * * *	
721.6820	2070–0012
* * * * *	
721.8155	2070–0012
* * * * *	
721.8170	2070–0012
* * * * *	
721.8670	2070–0012
* * * * *	
721.9505	2070–0012
721.9540	2070–0012
* * * * *	

3. Under the heading ''Asbestos,'' by removing the entry ''part 763, subpart D'' and by removing the entry ''part 763, subpart F.''

4. Under the heading ''Identification of Specific Chemical Substance and Mixture Testing Requirements,'' by removing completely the entries for §§ 799.500, 799.925, 799.940, 799.1051, 799.1052, 799.1054, 799.1285, 799.1550, 799.1650, 799.2175, 799.2200, 799.3175, 799.3450, 799.4000, and 799.4400.

[FR Doc. 95–16186 Filed 6–29–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[WI50–01–6739a; FRL–5219–7]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) approves a revision to Wisconsin's State Implementation Plan (SIP) for ozone which was submitted to the USEPA on June 30, 1994 and supplemented on July 15, 1994. This revision consists of volatile organic compound (VOC) regulations which establish reasonably available control technology (RACT) for yeast manufacturing, molded wood parts or products coating, and wood door finishing. These regulations were submitted to address, in part, the requirement of section 182(b)(2)(C) of the Clean Air Act (Act) that States revise their SIPs to establish RACT regulations for major sources of VOCs for which the USEPA has not issued a control technology guidelines (CTG) document. In the proposed rules section of this **Federal Register**, the USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this action, the USEPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. A second public comment period will not be held.

Parties interested in commenting on this action should do so at this time.

DATES: This action will be effective August 29, 1995, unless an adverse comment is received by July 31, 1995. If the effective date of this action is delayed due to adverse comments, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the State submittal are available for public review during normal business hours at the above address. (It is recommended that you telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886–1767.

SUPPLEMENTARY INFORMATION: Section 182(b)(2) of the Act requires States to adopt VOC RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. Section 182(b)(2)(C) specifically requires that States submit revisions to the SIP for major sources of VOCs for which the USEPA has not issued a CTG document. The counties of Kewaunee, Manitowoc, and Sheboygan and the Milwaukee area (including Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha) are the only areas in Wisconsin designated nonattainment and classified as moderate or above. Therefore, these are the areas in Wisconsin subject to the RACT catch-up requirements of section 182(b)(2) of the Act.

Because the USEPA has not issued a CTG for yeast manufacturing, molded wood parts or products coating, or wood door finishing, the State of Wisconsin developed non-CTG regulations for these categories. These regulations were submitted to the USEPA by the State on June 30, 1994 and supplemented on July 15, 1994.

Yeast Manufacturing

Because each fermentation stage has a specific function in the manufacturing of yeast, the State's regulation limits the VOC concentration of the exhaust of each fermentation stage differently. The State's regulation limits average VOC concentrations in the exhaust gas stream to 100, 150, and 300 ppm for trade, first generation, and stock fermenters, respectively. An exemption is allowed for the fermentation of any yeast varieties which amount to less than 1 percent by weight of the facility's total annual liquid yeast production.

Molded Wood Parts or Products Coating

For sources using flow coating, the State's regulation sets the following limits beginning on May 30, 1995: 2.5 lbs VOC/gallon for white pigmented prime coatings, 2.75 lbs VOC/gal for tinted pigmented prime coatings, and 5.3 lbs VOC/gal for topcoats. The State further tightens the limit for topcoats to 3.5 lbs VOC/gal beginning on May 1, 1997. For sources using any other application method the state sets the following limits beginning on May 30, 1995: 5.9 lbs VOC/gal for prime coatings and 3.5 lbs VOC/gal for topcoats. The State further tightens the limit for prime coats to 2.5 lbs VOC/gal beginning on November 15, 1996. An exemption is granted for the use of topcoats that are applied as a stripe not more than 1/2 inch in width to croquet balls and whose use in aggregate never exceeds 500 gallons per year, as applied.

Wood Door Finishing

The State's regulations set the following limits: 6.9 lbs VOC/gal on or after May 31, 1995 but before May 1, 1997 and 5.7 lbs VOC/gal on or after May 1, 1997. Additionally, it is required that coatings only be applied using electrostatic application, flow coating, dip coating, low-pressure spray methods, paint brush, hand roller or roll coater.

To determine the approvability of a VOC rule, USEPA must evaluate the rule for consistency with the requirements of section 110 and part D of the Act. In addition, USEPA has reviewed the Wisconsin rule in accordance with USEPA policy guidance documents and regulations, including ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' Model VOC RACT Rules as attached to the June 24, 1992 memorandum entitled ''Volatile Organic Compounds (VOC) Rules for Reasonably Available Control Technology (RACT),'' and the Chicago Federal Implementation Plan as published in the **Federal Register** on June 29, 1990 (55 FR 26814), codified at 40 CFR § 52.741. The USEPA has found that the rules meet the requirements applicable to ozone and are, therefore, approvable for incorporation into the State's ozone SIP. A more complete discussion of the USEPA's review of the State's regulations is contained in technical support documents dated December 21, 1994, and April 18, 1995. The USEPA is approving this revision as meeting, in part, the RACT catch-up requirements of section 182(b)(2) of the Act.

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in this **Federal Register** publication, which constitutes a ''proposed approval'' of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The ''direct final'' approval shall be effective on August 29, 1995, unless USEPA receives adverse or critical comments by July 31, 1995.

If the USEPA receives comments adverse to or critical of the approval discussed above, USEPA will withdraw this approval before its effective date, and publish a subsequent **Federal Register** document which withdraws this final action. All public comments received will then be addressed in a subsequent document. Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises the public that this action will be effective on August 29, 1995.

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.

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

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

government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. 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 the USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.,* 427 U.S. 246, 256–66 (1976).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 29, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: May 31, 1995.

David A. Ullrich,

Acting Regional Administrator.

40 CFR part 52, is amended as follows:

Subpart YY—Wisconsin

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.2570 is amended by adding paragraph (c)(81) to read as follows:

§ 52.2570 Identification of Plan.

* * * * *

(c) * * *

(81) A revision to the ozone State Implementation Plan (SIP) was submitted by the Wisconsin Department of Natural Resources on June 30, 1994, and supplemented on July 15, 1994. This revision consists of volatile organic compound regulations which establish reasonably available control technology for yeast manufacturing, molded wood parts or products coating, and wood door finishing.

(i) Incorporation by reference. The following sections of the Wisconsin Administrative Code are incorporated by reference.

(A) NR 422.02(7), (34) as amended and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994. NR 422.02(12e), (18m), (24s), (27m), (33d), (34m), (46m), and (51) as created and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994.

(B) NR 422.03(intro.) as amended and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994. NR 422.03 (8) and (9) as created and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994.

(C) NR 422.04(1)(a) as amended and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994.

(D) NR 422.132 as created and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994.

(E) NR 422.135 as created and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994.

(F) NR 424.02 (3), (4), (5), (6), and (7) as created and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994.

(G) NR 424.05 as created and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994.

(H) NR 439.04(5)(a)(intro.) as amended and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994.

(I) NR 439.075(2)(a)4. as amended and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994.

(J) NR 439.09(7m) as created and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994. NR 439.09(9)(b) as amended and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994.

(K) NR 439.095 (1)(e) and (5)(e) as created and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994.

(L) NR 484.05(9) as renumbered from NR 484.05(2), amended and published in the (Wisconsin) Register, August, 1994, No. 464, effective September 1, 1994.

[FR Doc. 95–16064 Filed 6–29–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 372

[OPPTS–400032B; FRL–4962–4]

RIN 2070–AC00

Ammonia; Ammonium Sulfate (solution); Ammonium Nitrate (solution); Water Dissociable Ammonium Salts; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking the following four actions in response to a petition to delete ammonium sulfate (solution) from the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA): (1) Deleting ammonium sulfate (solution) from the EPCRA section 313 list of toxic chemicals; (2) requiring that threshold and release determinations for aqueous ammonia be limited to 10 percent of the total ammonia present in aqueous ammonia solutions; (3) modifying the ammonia listing by adding a qualifier; and (4) deleting ammonium nitrate (solution) as a separately listed chemical on the EPCRA section 313 list of toxic chemicals. EPA has concluded that the aqueous ammonia present in ammonium sulfate (solution) is more appropriately reported under the EPCRA section 313 ammonia listing, and that reporting 10 percent total aqueous ammonia under the ammonia listing is appropriate and provides sufficient information for the public to assess the impacts of releases of aqueous ammonia. EPA has also concluded that releases of ammonium nitrate (solution) are more appropriately reported under the EPCRA section 313 listings for ammonia and the water dissociable nitrate compounds category.

EFFECTIVE DATES: All provisions of this rule are final June 30, 1995. For effective dates on the reporting requirements, see Unit IV. of this preamble.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, 202–260–9592, e-mail: doa.maria@epamail.epa.gov, for specific information on this final rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline,

Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is promulgated under sections 313(d) and (e)(1) and 328 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). When enacted, section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. EPA has added chemicals to and deleted chemicals from the original statutory list. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued a statement of policy and guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has published a statement clarifying its interpretation of the section 313(d)(2) and (d)(3) criteria for adding and deleting chemicals from the section 313 list (59 FR 61439, November 30, 1994).

Facilities that manufacture, process, or otherwise use ammonia, ammonium sulfate (solution), ammonium nitrate (solution), and other water dissociable ammonium salts may be affected by this final rule if they meet the following criteria: (1) The facility has the equivalent of 10 or more full-time employees; and (2) the facility is included in Standard Industrial Classification (SIC) Codes 20 through 39; and (3) the facility manufactures (defined to include importing), processes, or otherwise uses the chemicals listed above in quantities equal to or greater than the threshold quantities set under EPCRA section 313(f).

II. Description of Petition and Proposed Actions

A. Description of Petition

On January 23, 1989, EPA received a petition from Allied-Signal Inc. to delete ammonium sulfate (solution) from the EPCRA section 313 list of toxic chemicals (EPA also received letters in support of this petition from W. R. Grace Company and ITT Rayonier Inc.). The petition was based on Allied-Signal Inc.'s contention that ammonium sulfate (solution) does not meet the EPCRA section 313 criteria for listing. Specifically, Allied-Signal Inc. claimed that: (1) Ammonium sulfate is not known to cause and cannot reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring releases, (2) ammonium sulfate does not show potential for causing in humans cancer or teratogenic effects, serious or irreversible reproductive dysfunction, neurological disorders, heritable genetic mutations, or other chronic health effects, and (3) ammonium sulfate does not show potential for adverse effects on the environment due to toxicity, persistency in the environment, and/or tendency to bioaccumulate in the environment.

B. Summary of Proposed Actions

Following a review of the petition, EPA issued a proposed rule in the **Federal Register** of March 30, 1990 (55 FR 12144), proposing to delete ammonium sulfate (solution) from the EPCRA section 313 list of toxic chemicals. This proposal, hereafter referred to as ''the original proposal,'' was based on EPA's belief that the only concerns identified for ammonium sulfate (solution) were for the aqueous ammonia present in the solution and that this aqueous ammonia is more appropriately reported under the EPCRA section 313 listing for ammonia. EPA stated that aqueous ammonia is manufactured when ammonium salts that dissociate in water (such as ammonium sulfate) are dissolved in water. EPA stated that therefore, releases of these ammonium salt solutions are environmentally equivalent to the release of aqueous ammonia generated by dissolving anhydrous ammonia in water.

In the original proposal, EPA preliminarily concluded that although there are no known significant human health effects associated with ammonium sulfate (solution), there are ecotoxic effects of concern. EPA further preliminarily concluded that the ecotoxicity concerns for ammonium sulfate (solution) were limited to the aqueous ammonia (i.e., total ammonia) present in these solutions and that the sulfate portion was not of concern. EPA stated that the toxicity of aqueous ammonia to aquatic organisms has been extensively studied and is well understood and that the un-ionized form of ammonia is relatively more toxic than the ionized form of ammonia. EPA stated that because the toxicity of aqueous ammonia solutions is dependent on the pH and temperature of the solution, the toxicity of aqueous ammonia is not dependent solely on the amount of the un-ionized form present. For this reason, aqueous ammonia toxicity cannot be represented solely by the concentration of the un-ionized form of ammonia. Thus, EPA preliminarily concluded that the toxicity of an aqueous solution of ammonia cannot be represented by a single value but must be expressed as a function of pH and temperature. Because the un-ionized ammonia concentration changes with pH and temperature, and the toxicity is not due solely to the un-ionized form, EPA reasoned that it is necessary to calculate the total ammonia concentration in order to determine the toxicity of the solution as the pH and temperature conditions change.

In the original proposal EPA also discussed how to address the fact that certain facilities might not be aware of the chemistry of aqueous solutions of ammonium salts. As a result, facilities that manufacture, process, or otherwise use aqueous solutions of ammonium salts that dissociate in water might not understand that they should make threshold determinations under EPCRA section 313 to assess whether reporting for releases under the ammonia listing is required. Therefore, EPA discussed options concerning how to inform the regulated community of the need to include these solutions in their calculations. EPA preliminarily concluded that technical guidance should be issued clarifying the reporting

requirements under the ammonia listing. In the same issue of the **Federal Register** in which the original proposal was published, a notice of availability was published (55 FR 12148, March 30, 1990) notifying the public and the regulated community of the availability of a guidance document on the reporting of ammonia releases.

In the original proposal, EPA also discussed two options for reporting releases of aqueous ammonia:

(1) Report releases of total ammonia; or

(2) Report a proportion of the releases of total ammonia.

In discussing the two options, EPA stated that reporting total ammonia would allow communities to determine the proportion of un-ionized ammonia and ionized ammonia present in the receiving stream based on the pH and temperature characteristics of the stream. This information would allow communities to easily determine the un-ionized ammonia and ionized ammonia loading resulting from facility releases of aqueous ammonia. EPA stated that although the ionized form of ammonia is less toxic to aquatic organisms than the un-ionized form of ammonia, it is present in a higher proportion under most environmental conditions and may present the greater hazard. EPA also stated that reporting releases as a proportion of the amount of un-ionized ammonia released would result in data that cannot be used as well since it must be extrapolated to determine the amount of total ammonia released.

EPA proposed the second option in recognition of the fact that the un-ionized form of ammonia is relatively more toxic than the ionized form of ammonia and that under environmental conditions only a proportion of total ammonia is in the un-ionized form. EPA requested comment on whether a proportion, which would be the same for all facilities, of releases of total ammonia should be reported. EPA suggested that this proportion could be a worst-case estimate of the proportion of the un-ionized form of ammonia present in processing waters reflecting an upper bound level of the amount of the un-ionized form of ammonia formed. EPA also requested comment on what proportion of total ammonia should be used as an estimate.

In response to comments received on the original proposal and issues raised in subsequent discussions with the regulated community, EPA issued an amended proposed rule (60 FR 16830, April 3, 1995), hereafter referred to as ''the amended proposal.'' The issue of what forms of ammonia should be reportable under the ammonia listing had been the source of ongoing discussions between EPA and affected parties since publication of the original proposal. This resulted in a significant amount of additional information becoming available to EPA, and was one of the reasons EPA amended the proposed rule. This information covered five main areas: (1) Data concerning the pH and temperature of lakes, rivers, and streams in the U.S.; (2) additional data concerning the toxicity of aqueous ammonia to one aquatic organism; (3) data on the environmental fate of aqueous ammonia; (4) additional exposure analysis of releases of aqueous ammonia; and (5) a review of the scientific issues concerning the reporting of aqueous ammonia under EPCRA section 313 by the Agency's Science Advisory Board (SAB).

Also, due to the recent addition of a water dissociable nitrate compounds category to the EPCRA section 313 list of toxic chemicals (59 FR 61439, November 30, 1994), EPA expanded the proposed rule to include the deletion of ammonium nitrate (solution) as a separately listed chemical under EPCRA section 313. Therefore, EPA decided to publish the amended proposal to allow for adequate public notice and comment on the ammonium nitrate (solution) issue.

In the amended proposal, EPA reaffirmed its preliminary conclusion that ammonium sulfate (solution) should be deleted from the EPCRA section 313 list of toxic chemicals. EPA proposed to take four specific actions and asked for public comment on these proposed actions. The four proposed actions are the same as those being promulgated in this rule and are discussed below in Unit III. of this preamble. The amended proposal contained a detailed rationale for each of these actions that will not be repeated here. Unit III.B. of this preamble contains additional discussion of the rationales and conclusions concerning these actions.

The original proposal, the amended proposal, and the combined docket for these two proposals and this final rule contain complete discussions and documentation of EPA's technical review of ammonium sulfate (solution), aqueous ammonia, ammonium nitrate (solution), and the options EPA has considered for resolving the reporting requirements under the ammonia listing.

III. Final Rule and Rationale for Actions

In response to the petition from Allied-Signal Inc., EPA is taking the following four actions under EPCRA section 313: (1) Deleting ammonium sulfate (solution) from the EPCRA section 313 list of toxic chemicals; (2) requiring that threshold and release determinations for aqueous ammonia be based on 10 percent of the total ammonia present in aqueous solutions of ammonia; (3) modifying the ammonia listing by adding the following qualifier: ammonia (includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources; 10 percent of total aqueous ammonia is reportable under this listing); and (4) deleting ammonium nitrate (solution) as a separately listed chemical on the EPCRA section 313 list of toxic chemicals. Under this action, facilities will be required to include 10 percent of the total ammonia in aqueous solutions in all threshold and release determinations under the EPCRA section 313 listing for ammonia. EPA has concluded that ammonium sulfate (solution) does not meet the EPCRA section 313 criteria based on human health concerns; however, there remain concerns about ecotoxicity from the aqueous ammonia present in this solution. Accordingly, EPA has determined that the aqueous ammonia present in this solution is more appropriately reported under the EPCRA section 313 ammonia listing. EPA has concluded that reporting 10 percent total aqueous ammonia under the ammonia listing is an appropriate way to report aqueous ammonia and provides sufficient information for the public to assess the impacts of releases of aqueous ammonia. EPA has concluded that in order to avoid confusion over what is reportable under the ammonia listing, the listing should be modified to include a description of what is covered by the listing. EPA has concluded that releases of ammonium nitrate (solution) are more appropriately reported under the EPCRA section 313 listings for ammonia and the water dissociable nitrate compounds category.

A. Response to Comments

EPA received 15 comments on the original proposal and 18 comments on the amended proposal. All of the comments received were from members or representatives of the industrial sectors that are subject to the reporting requirements of EPCRA section 313. In this final rule, EPA is providing responses to the major comments received that are relevant to today's final action. In addition, EPA has prepared and placed in the docket for this rulemaking a response to comment document that addresses the additional comments received (Ref. 1). All commenters support the deletion of

ammonium sulfate (solution) and ammonium nitrate (solution) from the EPCRA section 313 list, therefore that aspect of the comments will not be addressed further. Eight of the 18 companies that commented on the amended proposal strongly urged EPA to promulgate this final rule prior to July 1, 1995.

As a separate action, taken at the same time as the original proposal, EPA requested comment on the revised guidance for reporting aqueous ammonia under the ammonia listing (55 FR 12148). Several commenters contended that EPA should not require the reporting of aqueous ammonia from ammonium salts or any proportion of total ammonia by revising guidance but rather should do this by rulemaking. As discussed below, EPA believes that total aqueous ammonia is covered by the EPCRA section 313 ammonia listing. EPA also believes that the quantities of aqueous ammonia manufactured by dissolving water dissociable ammonium salts in water are subject to release and threshold determinations under the EPCRA section 313 ammonia listing. However, one of the reasons EPA amended the original proposal was to respond to these comments and concerns by making this position explicit in the listing. EPA is also providing a new guidance document to reflect the requirements of today's final rule; EPA's previous guidance document on ammonia reporting is no longer applicable. Comments received concerning the previous guidance document that are relevant to today's final rule are addressed below and in the response to comment document.

1. *Neither total ammonia nor the ionized form of ammonia is reportable under the ammonia listing.* Several commenters stated that EPA cannot require the reporting of any portion of the ionized form of ammonia under the EPCRA section 313 ammonia listing because they contend that only the un-ionized form of ammonia is covered by that listing. Two commenters contended that aqueous ammonia is ammonium hydroxide and that it is not listed on nor is it reportable under the EPCRA section 313 ammonia listing. One of these commenters also asserted that ammonium hydroxide is the ionized form of ammonia.

EPA believes that the ionized form of ammonia is covered by the EPCRA section 313 listing for ammonia. The EPCRA section 313 listing for ammonia is not limited to anhydrous forms, and, as such, quantities of ammonia in water (i.e., aqueous ammonia) must be applied to threshold and release determinations for this listing. Aqueous ammonia consists of two forms of ammonia, the un-ionized form and the ionized form. These are not two discrete chemicals; rather they are two forms of the same chemical, ammonia. When placed in water, ammonia is not destroyed or converted to a different chemical. It simply exists as an equilibrium mixture of the ionized and un-ionized forms with the concentration of each form mainly dependent on the pH and temperature of the solution.

With regard to the purported chemical ammonium hydroxide (NH_4OH), this is a misnomer. It is a common name used to describe a solution of ammonia in water, typically a concentrated solution of 28 to 30 percent ammonia. Aqueous ammonia is not ammonium hydroxide. The true nature of aqueous ammonia ''deviates appreciably from the simple composite of ammonium and hydroxide ions'' (Ref. 2). In the process of dissolving ammonia in water (H_2O + NH_3 ---> 'A'), 'A' is not ammonium hydroxide. ''There is clear evidence that it is not ammonium hydroxide under two important conditions (1) in aqueous solution (Ref. 3); and (2) as a solid (which exists only at low temperatures) (Refs. 4 and 5)'' (Ref. 6). It is reasonable to conclude, in accord with modern theories of bonding, that 'A' consists of ammonia and water molecules engaged in hydrogen bonding (Refs. 6 and 7). It is clear that dissolving ammonia in water does not result in a new chemical compound, i.e., ammonium hydroxide, but rather results in hydrated ammonia. The pH and temperature dependency of the equilibrium between the un-ionized and ionized forms of ammonia reveal that the 28 to 30 percent solutions of ammonia in water (which, as noted above, are sometimes referred to as ammonium hydroxide) must consist almost entirely of the un-ionized form of ammonia. EPA has consistently responded to questions regarding the reportability of these purported ammonium hydroxide solutions under the EPCRA section 313 ammonia listing by stating that these are 28 to 30 percent solutions of ammonia in water and that the ammonia in this solution is reportable under the ammonia listing.

The issue of what is reportable under the ammonia listing should no longer be a subject of debate since in today's final rule EPA is modifying the ammonia listing to make it clear that 10 percent of total aqueous ammonia from all sources is reportable under the ammonia listing.

2. *Total ammonia should not be reported under the ammonia listing.* All commenters responding to the original proposal stated that EPA should not require the reporting of total aqueous ammonia (i.e., the sum of the un-ionized and ionized forms of ammonia) under the ammonia listing since this drastically overstates the amount of the toxic un-ionized form of ammonia in a facility's releases. Commenters stated that under environmental conditions aqueous ammonia consists mainly of the relatively non-toxic ionized form of ammonia. Commenters stated that reporting total aqueous ammonia would mislead the public as to the volume of toxic chemical released.

EPA believes that the toxicity characteristics of aqueous ammonia do not preclude the reporting of total aqueous ammonia. The consensus of the scientific community is that the toxicity of a solution of aqueous ammonia is dependent on the pH and temperature of the solution. Studies of the pH and temperature dependency of aqueous ammonia toxicity have led to the commonly held opinion that the ionized form of ammonia is relatively less toxic than the un-ionized form, perhaps as much as 100 times less toxic. However, the exact toxicity of each form cannot be independently measured since under conditions that will support most aquatic organisms each form is always present at some level. In addition, the pH and temperature dependency of aqueous ammonia toxicity is not simply a reflection of the amount of the un-ionized form of ammonia present. Therefore, EPA does not believe that reporting total aqueous ammonia in some manner would drastically overstate the amount of toxic chemical released since both forms of ammonia contribute to the toxicity of an aqueous solution of ammonia. In today's final rule EPA is not requiring the reporting of total aqueous ammonia under the ammonia listing. EPA is limiting the reporting of aqueous ammonia to a proportion of total aqueous ammonia in consideration of the fact that the un-ionized form of ammonia is relatively more toxic than the ionized form. EPA believes that this alternative is less burdensome since a smaller number of facilities will meet the reporting thresholds based on 10 percent total aqueous ammonia than would if EPA required the reporting of total aqueous ammonia. In addition, EPA believes that this alternative addresses concerns raised by the regulated community about how reporting total aqueous ammonia would mislead the public as to the volume of the toxic chemical released.

3. *Under EPCRA section 313 reporters are not required to consider chemical conversions that occur in the environment.* Because some commenters contend that ionized ammonia and un-

ionized ammonia are two different chemicals, they argue that by requiring facilities to base release determinations on 10 percent of total aqueous ammonia EPA is requiring facilities to report releases of a chemical that is not listed on EPCRA section 313. They contend that the statute does not require facilities to report on conversion of non-listed chemicals into listed chemicals where such conversion takes place after release to the environment.

EPA disagrees. As stated above in Unit III.A.1. of this preamble, EPA believes that un-ionized ammonia and ionized ammonia are two forms of one chemical not two separate chemicals. Therefore, EPA is requiring that only a fraction of the total releases of the listed chemical be reported. Further, even if EPA were to accept the argument that these two forms were actually two separate chemicals, EPA believes that it would be appropriate to list a chemical on EPCRA section 313 because the chemical is transformed in the environment into a more toxic chemical. EPCRA allows EPA to add a chemical to the section 313 list if the chemical is ''known to cause or can reasonably be anticipated to cause'' certain adverse human health or environmental effects. The statute and the legislative history do not specifically preclude the consideration of whether the listed chemical is transformed in the environment to a more toxic chemical that causes the adverse effects in evaluating whether or not a chemical meets the statutory criteria for listing under EPCRA section 313. EPA believes that environmental transformations can and should be considered in determining whether or not a chemical should be subject to reporting under EPCRA section 313. When listing a chemical on the EPCRA section 313 list that is transformed in the environment to a more toxic chemical, EPA requires threshold and release determinations to be made only on quantities of the listed chemical, not on quantities of the more toxic chemical generated subsequent to release into the environment.

4. *The un-ionized portion of aqueous ammonia should be calculated based on the pH and temperature of the industrial effluent.* Commenters stated that only the un-ionized form of ammonia should be reported for aqueous ammonia and that the reporting should be based on calculations using the pH and temperature data of the facility's effluent. Commenters state that this is the most accurate information that can be provided concerning the amount of the toxic chemical released by the facility.

EPA believes that reporting the amount of the un-ionized form of ammonia in an aqueous ammonia release without reporting the pH and temperature of the release would not adequately report or characterize the toxic chemical released. For aqueous ammonia, in order to appropriately characterize the toxic chemical released, not only would the amount of the un-ionized form have to be reported but the pH and temperature of the effluent solution (which are data not currently required to be reported under EPCRA section 313) would have to be reported as well. This is because the toxicity of aqueous ammonia solutions is dependent on the pH and temperature of the solution; the toxicity of aqueous ammonia is not dependent solely on the amount of the un-ionized form of ammonia present. The pH and temperature dependency of aqueous ammonia toxicity is not simply a reflection of the amount of the un-ionized form of ammonia present since in the lower pH range (where there is less un-ionized ammonia), aqueous ammonia is more toxic when expressed in terms of the concentration of the un-ionized form. Therefore effluent solutions cannot be appropriately reported or characterized based solely on the amount of the un-ionized form of ammonia present. For aqueous ammonia, the nature of the toxic chemical released or its impact on the environment cannot be determined unless, at a minimum, total aqueous ammonia can be determined from the reported data. The pH and temperature data not only provide information as to the true nature of the toxic chemical releases but can also be used to determine total aqueous ammonia from the amount of un-ionized ammonia present. The only alternatives to reporting the pH and temperature data for releases are to report total aqueous ammonia or a proportion of total aqueous ammonia which when combined with environmental pH and temperature data are sufficient to characterize the toxic chemical released. Under any of these reporting options, the user of the data must still acquire environmental pH and temperature data in order to fully characterize the environmental significance of a release. However, this information can be readily obtained from public sources and would not involve access to information from a facility's private records. If facilities are allowed to report only the amount of the un-ionized form of ammonia in a release, then the pH and temperature of each release (to water, to POTWs, to land, to underground injection) as well as off-site transfers for disposal would need to be reported in order to appropriately report and characterize the toxic chemical released. If this information is not collected, then it is not possible for the public to determine the toxicity of the chemical released or to assess the potential impact on the environment from such a release. Reporting only the amount of the un-ionized form of ammonia in a facility's effluent would not provide the public with information sufficient to assess the volume and hazard of the toxic chemical released. For example, a facility could reduce its reportable releases by 10-fold simply by adjusting the pH of its effluent from 7 to 6. However, the same amount of total ammonia would be released under both conditions and upon mixing in the receiving stream the same potential hazard would result from both releases. Therefore, the public would be misled as to the amount and significance of the toxic chemical released.

EPA believes that it would be an unnecessary and overly burdensome requirement to have facilities report the pH and temperature of each release since the alternative of reporting a set percentage of total ammonia without pH and temperature data provides sufficient information to assess the impact of releases to the environment of aqueous ammonia solutions while minimizing burden. Further, EPA believes that aqueous ammonia meets the criteria of EPCRA section 313 primarily, but not exclusively, based on the toxicity of the un-ionized form of ammonia. Therefore, EPA believes it would be inappropriate to require reporting of only the un-ionized form of ammonia.

5. *The un-ionized portion of aqueous ammonia should be calculated based on receiving stream conditions.* Several commenters stated that facilities should be allowed to calculate the concentration of the un-ionized form of ammonia in a release based on the pH and temperature data for the water bodies that they release to, either as the required method or as an alternative to reporting a set percentage of total ammonia.

EPA considered the option of reporting the amount of the un-ionized form of ammonia released based on the pH and temperature of the receiving streams. However, this option has the same problems that occur when using the pH and temperature of the effluent, in that the facility must report the pH and temperature data used to make the calculations in order to appropriately report and characterize the toxic chemical released (see Unit III.A.4. of this preamble). In addition, the pH and

temperature of receiving streams are subject to seasonal variations that are likely to vary much more than that of industrial effluent streams. This would mean that reported releases of un-ionized ammonia would be based on data with much more variability than those based on effluent data. If the pH and temperature information is not reported, then it is not possible to determine the toxicity of the chemical released or to assess the impact on the environment from such a release under various conditions. An additional burden of this option is that it would require reporters to gather information about conditions outside of their facility which is not currently a requirement for reporting under EPCRA section 313. Although information on environmental pH and temperature conditions should be available from public sources, it would be an added reporting burden for reporters to gather such data. The facilities would also still need to report the pH and temperature of their other releases (to land, POTWs, underground injection, etc.) in order to appropriately report and characterize the toxic chemical present in these releases. EPA believes that it would be an unnecessary and overly burdensome requirement to have facilities report the pH and temperature data used to determine each release since the alternative of reporting a set percentage of total ammonia provides sufficient information to assess the impact of releases to the environment of aqueous ammonia solutions and reduces reporting burdens. Further, as stated above in Unit III.A.4. of this preamble, EPA believes that it is inappropriate to require the reporting of only the un-ionized form of ammonia.

6. *Reporting a set proportion of total ammonia is not appropriate.* Commenters stated that reporting a set proportion of total aqueous ammonia overestimates releases of the un-ionized form of ammonia for some facilities and underestimates the releases for others, thus misrepresenting the quantity of the un-ionized ammonia released. Commenters state that the use of national conditions rather than local conditions is inappropriate. Commenters stated that it is not appropriate to mandate an estimation method (i.e., 10 percent total aqueous ammonia) when the facility may have better information available. Commenters contend that EPA reporting guidance and enforcement policy states that all readily available information be used to calculate releases as accurately as possible and that reporting a set proportion violates this guidance.

EPA believes that reporting a proportion of total ammonia is appropriate. A proportion is used to reflect a reasonable estimation of the amount of the un-ionized form of ammonia that may be present under environmental conditions and takes into account the contribution of the ionized form of ammonia to the toxicity of aqueous ammonia. It also serves as an alternative to the more burdensome reporting requirements of either reporting the amount of the un-ionized form of ammonia in a release along with the pH and temperature of each release or of the receiving stream, or reporting total aqueous ammonia. Given that the ionized form of ammonia contributes to the toxicity of aqueous ammonia and that not all of the aqueous ammonia released will be in the more toxic un-ionized form, EPA believes that it is appropriate to limit the reporting of total aqueous ammonia to a proportion of total aqueous ammonia. For aqueous ammonia, the pH and temperature of the solution are not only used to estimate the proportion of aqueous ammonia existing in the un-ionized form, but also to define the toxicity of the solution at that pH and temperature. For example, the aquatic toxicity of three solutions of aqueous ammonia that each contain 0.1 mg/l of the un-ionized form of ammonia, but at different pH and temperatures (thus, with differing amounts of total ammonia), will not be the same.

EPA does not agree that reporting a proportion of total aqueous ammonia misrepresents the toxic chemical released. As discussed above in Unit III.A.4. of this preamble, EPA believes that reporting only the amount of the un-ionized form of ammonia in a facility's effluent, in the absence of pH and temperature data, misleads the public as to the volume and hazard of the toxic chemical released.

EPA is not mandating an estimation method, rather EPA is defining the limits of the reportability of a listed chemical. How a facility determines what represents 10 percent of total aqueous ammonia in their threshold and release determinations is still determined by the facility.

7. *Reporting 10 percent of total aqueous ammonia overestimates the releases of un-ionized ammonia.* Of the 18 comments received on the amended proposed rule, 10 commenters stated that reporting 10 percent total ammonia was too high or inappropriate, while 5 other commenters agreed with the proposal, and 2 other commenters agreed at least to some degree with the Agency's proposal. Commenters also stated that EPA should not use a percentage of total aqueous ammonia that it based on ''worst-case scenario'' environmental conditions. Of the commenters that oppose the 10 percent standard, 8 suggested that 1 percent would be a more realistic value (since it would be consistent with the 50th percentile for pH and temperature data) as an alternative to calculating the un-ionized portion based on pH and temperature of the effluent. Two commenters on the original proposal stated that, as a default value, 45 percent of total ammonia should be used since this would represent the amount of un-ionized ammonia present at pH 9 and 30 °C and one commenter suggested 7.5 percent as the reporting level which is based on pH 8 and 30 °C. Three commenters cited what they contend are the SAB recommended standard conditions and suggested that reporting 1 percent total aqueous ammonia would be closer to the SAB standard conditions. None of these commenters indicated any support for reporting the pH and temperature data for their releases of aqueous ammonia.

EPA believes that for reporting purposes under EPCRA section 313, 10 percent of total aqueous ammonia is an appropriate proportion to report under the ammonia listing. Both the un-ionized and ionized forms of ammonia are toxic to aquatic organisms with the ionized form being relatively less toxic, but not non-toxic. EPA believes that aqueous ammonia meets the criteria of EPCRA section 313 primarily, but not exclusively, based on the toxicity of the un-ionized form of this chemical. Given the complexity of aqueous ammonia toxicity and the scientific consensus that the un-ionized form is primarily responsible for the aquatic toxicity, EPA believes that it is appropriate to limit the amount of total aqueous ammonia that is reported.

EPA believes that setting the proportion of total aqueous ammonia to be reported based on the 90th percentile for pH and temperature of the Nation's waters is not overly conservative given the complex nature of the toxicity of aqueous ammonia. By using 10 percent of total aqueous ammonia EPA is discounting 90 percent of the releases. EPA believes this addresses concerns raised by some commenters that reporting 100 percent total aqueous ammonia misleads the public as to the hazard associated with the release due to the high numbers associated with such reporting. Ten percent total aqueous ammonia reflects a reasonable estimation of the amount of un-ionized ammonia that may be present under environmental conditions and takes into account the contribution of the ionized

form to the toxicity of aqueous ammonia since total ammonia can be derived from the data. It also serves as an alternative to the more burdensome reporting requirement of reporting the amount of un-ionized ammonia in a release along with the pH and temperature of each release or of the receiving stream. EPA does not believe that discounting 99 percent of a release (i.e., reporting only 1 percent total aqueous ammonia) is appropriate given the nature of the toxicity of aqueous ammonia and the pH and temperature data for the Nation's waters.

EPA does not agree that 10 percent total aqueous ammonia represents a ''worst-case scenario.'' EPA believes that a ''worst-case scenario'' would be to report a percentage of total ammonia based on the highest pH and temperatures reported for the Nation's waters. A review of the data indicates that the average of the highest reported pH and temperature conditions for each State would result in aqueous ammonia consisting of approximately 75 percent un-ionized ammonia. Therefore, EPA believes that 10 percent is far from being a ''worst-case'' estimation of the amount of the un-ionized form of ammonia released into the environment. Given the seasonal variations in pH and temperature, it is reasonable to assume that many locations may equal or exceed 10 percent at some point during the year even if the average conditions would produce less than 10 percent un-ionized ammonia. One added complexity is the timing of releases from facilities which may or may not be consistent throughout the year. In fact, higher releases may occur during periods when the pH and temperature of the receiving stream is well above the average conditions resulting in higher concentrations of the un-ionized form of ammonia in the receiving stream than estimated by the average conditions. In addition, there are some other types of releases, such as to deep wells, which may contain aqueous ammonia at pH and temperature conditions that result in much more than 10 percent of the un-ionized form of ammonia being present in the environment. For these releases reporting only 10 percent total aqueous ammonia clearly does not represent a ''worst-case scenario'' and is a significant reduction in reporting burden since a smaller number of facilities will meet reporting thresholds. Again, as stated above, EPA does not believe that reporting 10 percent total aqueous ammonia is overly conservative or misrepresents the potential impact on the environment or the toxicity of such releases.

The SAB letter received by EPA in response to the Agency's requested review contained the following statement: ''For example, if the policy concern is solely for aquatic toxicity, then reporting non-ionized ammonia concentrations at a standard pH and temperature (e.g., pH 7 and 15 °C) would address this endpoint.'' EPA believes that the important part of this statement is that ''a standard pH and temperature'' be used. This is consistent with EPA's position that unless a facility reports total aqueous ammonia, a proportion of total aqueous ammonia, or the amount of the un-ionized form of ammonia along with the pH and temperature of the solution released or of the receiving stream, the toxic chemical is not appropriately reported or characterized. With regards to the parenthetical ''(e.g., pH 7 and 15 °C)'', EPA does not believe that this should be considered as being the recommended pH and temperature to be used. Since ''e.g.'' means ''for example'', EPA believes that the pH and temperature values in the SAB letter were an example, not a recommended best set of conditions. In fact, the SAB letter gave no justification for these conditions, nor did it provide any discussion of the issue of the most appropriate or standard conditions to use. The SAB letter went on to state, ''Thus, the question of whether to list or how to list ammonia or any of its forms is not a scientific issue but strictly a matter of policy for the Agency to decide.'' EPA believes that reporting a proportion of total aqueous ammonia that is based on reported pH and temperature data for the Nation's waters provides the necessary standard conditions and allows for appropriate reporting and characterization of the toxic chemical released.

8. *Releases of aqueous ammonia to Class I wells should be exempt from reporting.* Several commenters stated that since the only identified concerned for aqueous ammonia is aquatic toxicity, then discharges to Class I deep wells should not be reported since they do not represent an aquatic environment and have no potential for release to an aquatic environment.

EPA does not believe that, for reporting purposes under EPCRA section 313, it is appropriate to exempt the reporting of releases to a particular medium. Although the release of a toxic chemical to one type of medium may have a greater or lesser potential for adverse impacts on human health or the environment, there is always the potential for released material to enter into more sensitive environments. In addition, EPA does not believe that all of the release information provided under EPCRA section 313 should be viewed as being negative. The fact that one facility discharges to a medium that may pose less of a direct threat to human health or the environment is useful data for the public to know. In addition, there is some question as to whether EPA would have the statutory authority to provide such an exemption: section 313(g) requires facilities to report on the quantities of a toxic chemical entering each environmental medium and does not explicitly provide any mechanism to exempt releases to individual media.

9. *Aqueous solutions of ammonium salts are not equivalent to aqueous ammonia from anhydrous ammonia.* Some commenters stated that they do not believe that aqueous ammonia from solutions of ammonium salts is equivalent to aqueous ammonia produced from anhydrous ammonia.

EPA does not agree with this comment. As stated in the amended proposed rule, there are differences in the concentrations of the un-ionized form of ammonia between equimolar solutions of aqueous ammonia generated by dissolving dissociable ammonium salts versus anhydrous ammonia. These differences are due to the buffering effects (mainly reflected as pH differences) of the counter ions from the ammonium salts and disappear when both solutions are released to the environment. It is clear that ammonium salt solutions do produce aqueous ammonia since the sources of aqueous ammonia used to test the aquatic toxicity of aqueous ammonia are often ammonium salts (see Ref. 8 and references therein). For example, some of the chemicals that have been used as sources of aqueous ammonia are: Ammonium acetate, ammonium bicarbonate, ammonium carbonate, ammonium chloride, ammonium hydrogen phosphate, and ammonium sulfate. Clearly all of these ammonium salts produce aqueous ammonia that does not significantly differ from that produced from anhydrous ammonia.

B. Conclusion and Rationale for Actions

After reviewing comments received on the original proposal and the amended proposal, EPA has concluded that the four actions proposed in the amended proposal should be adopted as proposed. A brief discussion of the rationale for each action is provided below. A more detailed discussion of the rationales for each of these actions was provided in the amended proposal (60 FR 16830, April 3, 1995).

1. *Deletion of ammonium sulfate (solution).* EPA has concluded that the

sulfate portion of ammonium sulfate (solution) does not meet the EPCRA section 313(d)(2)(A), (B), or (C) criteria. EPA has previously reviewed the toxicity of sodium sulfate (54 FR 7217 and 54 FR 25850) and concluded that sulfate from sodium sulfate did not meet the EPCRA section 313(d)(2)(A), (B), or (C) criteria. EPA has concluded that the only component of ammonium sulfate (solution) that meets the EPCRA section 313 listing criteria is the aqueous ammonia present in this solution. EPA has concluded that this aqueous ammonia is more appropriately reported under the EPCRA section 313 ammonia listing, therefore it is appropriate to delete ammonium sulfate (solution) from the EPCRA section 313 list of toxic chemicals. EPA has concluded that 10 percent of the ammonium portion of ammonium sulfate (solution) (i.e., 10 percent of the total aqueous ammonia present in this solution) will remain reportable under the ammonia listing.

2. *Reporting of 10 percent of total aqueous ammonia.* EPA has reviewed all available data and considered all comments concerning how to report aqueous ammonia releases under EPCRA section 313. EPA has concluded that reporting only the amount of the un-ionized form of ammonia released does not provide sufficient information to describe the toxicity of the aqueous ammonia released or the impact of such releases. The toxicity of an aqueous solution of ammonia is not only dependent on the amount of aqueous ammonia or either of the two forms of ammonia present, but also on the pH and temperature of the solution. In addition, as was discussed in Unit III.A.4. of this preamble, reporting only the amount of the un-ionized form of ammonia in a facility's effluent misleads the public as to the volume and hazard of the toxic chemical released. Accordingly, EPA has concluded that reporting total ammonia in some manner is the appropriate way to report aqueous ammonia under EPCRA section 313.

EPA considered three total ammonia options for reporting aqueous ammonia releases that would adequately report and characterize the toxic chemical released. The first way is to report the pH and temperature of each type of release or of the receiving stream. This would better describe the toxicity of the aqueous ammonia released and allow for assessing its impact on the environment since total ammonia can be calculated from the pH and temperature data. The second way is to report total aqueous ammonia. Although this does not in itself better describe the toxicity of the solution released, it does report all of the aqueous ammonia released and provides sufficient information to assess the potential impact of releases. The third way is to report a proportion of total aqueous ammonia, which provides a level of information similar to reporting total aqueous ammonia but takes into consideration the fact that the un-ionized form of ammonia contributes more to the toxicity of the solution.

EPA has concluded that reporting the pH and temperature data for each release would be an unnecessary reporting burden since a less burdensome alternative to this requirement exists. In the original proposal EPA favored the reporting of total aqueous ammonia under the ammonia listing. However, based on comment, EPA has concluded that another appropriate way to report releases of aqueous ammonia is to report a uniform proportion of total aqueous ammonia. EPA has concluded that reporting only a proportion of total aqueous ammonia is appropriate since aqueous ammonia meets the EPCRA section 313 criteria primarily, but not exclusively, based on the toxicity of the un-ionized form of this chemical. EPA has concluded that reporting 10 percent total aqueous ammonia would be appropriate since, based on the 90th percentile for the pH and temperature conditions in the Nation's waters, 10 percent represents the amount of the un-ionized form of ammonia that would be present in receiving streams from releases of aqueous ammonia. EPA has concluded that considering the variations in the pH and temperature of the types of releases reported under EPCRA section 313, the fact the ionized form of ammonia also contributes to the toxicity of aqueous ammonia, and the potential impacts of aqueous ammonia releases, that the reporting of 10 percent total aqueous ammonia is appropriate. EPA has concluded that reporting 10 percent total aqueous ammonia will not overestimate the potential impacts of these releases and that this provides a much less burdensome method of reporting than requiring the reporting of the pH and temperature data for each release.

The reporting of 10 percent total aqueous ammonia will allow users of the data to determine potential impacts on the environment from such releases. Users of the data can calculate total aqueous ammonia releases by multiplying the reported amount of aqueous ammonia released by 10. The users can then use the amount of total aqueous ammonia released along with the pH, temperature, and other characteristics of the specific receiving stream to assess the potential impact of the aqueous ammonia releases.

3. *Modification of the ammonia listing.* The quantities of aqueous ammonia manufactured by dissolving water dissociable ammonium salts in water are subject to release and threshold determinations under the EPCRA section 313 ammonia listing. While clearly reportable, EPA believes that there may be some confusion about this requirement. EPA guidance in response to inquires concerning what is reportable under the ammonia listing has been that aqueous ammonia from water dissociable ammonium salts is reportable under the listing. However, even after publishing this guidance in 1990 (55 FR 12148), EPA continued to receive numerous inquires regarding what should be reported. Therefore, EPA has concluded that a qualifier to the ammonia listing should be added to clarify that aqueous ammonia from water dissociable ammonium salts is reportable under the ammonia listing. EPA believes that this modification of the ammonia listing, specifying that the listing includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources, will aid the regulated community in determining whether they are required to report and will eliminate any confusion over what is reportable under the ammonia listing. This modification also includes the 10 percent total aqueous ammonia reporting limit.

4. *Deletion of ammonium nitrate (solution).* EPA has concluded that deleting ammonium nitrate (solution) from the EPCRA section 313 list is appropriate because the recent addition of the water dissociable nitrate compounds category (59 FR 61432, November 30, 1994) and reporting of aqueous ammonia from water dissociable ammonium salts under the ammonia listing (as clarified in this final rule) negate the need for a separate listing for this chemical solution. EPA has concluded that this is not a significant change since the releases of ammonium nitrate (solution) are still reportable under the EPCRA section 313 listing for ammonia and the water dissociable nitrate compounds category. Under the water dissociable nitrate compounds category, the amount of ammonium nitrate in solution is counted in threshold determinations for the category, but only the amount of nitrate ion is counted in release and transfer determinations, therefore no double counting of releases will occur. This deletion simply consolidates the reporting of ammonium nitrate

(solution) under existing EPCRA section 313 listings.

IV. Effective Dates

All provisions of this rule are final June 7, 1995. However, these changes (with the exception of the deletion of ammonium nitrate (solution)) are effective for the 1994 reporting year. The deletion of ammonium nitrate (solution) listing is effective for the 1995 reporting year.

Section 313(d)(4) of EPCRA provides, ''Any revision [to the section 313 list] made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.'' EPA interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list; EPA may, at its discretion, make deletions from the list and amendments to listings immediately effective.

EPA believes that the purpose behind section 313(d)(4) is to allow facilities adequate planning time to incorporate newly added chemicals to their TRI release data collection processes. A facility would not need additional planning time not to report releases of a delisted chemical. Moreover, where EPA has determined that a chemical does not satisfy the criteria of section 313(d)(2)(A) through (C), no purpose is served by requiring facilities to collect release data or file release reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. Nothing in the legislative history suggests that section 313(d)(4) was intended to apply to deletions as well as additions. Thus, a reasonable construction of section 313(d)(4), given the overall purposes and structure of EPCRA--to provide the public with information about chemicals which meet the criteria for inclusion on the section 313 list--is to apply the delayed effective date requirement only to additions to the list. This construction of section 313(d)(4) is also consistent with previous rules deleting chemicals from the section 313 list.

An immediately effective date for two of the actions in this final rule is also consistent with 5 U.S.C. section 553(d)(1), since a deletion from the section 313 list relieves a regulatory burden. EPA believes the combined effect of the changes in this final rule would be to reduce the burden by clarifying what is reportable under the ammonia listing and by simplifying the reporting requirements for ammonia. In addition, the requirement that facilities include 10 percent of total ammonia in aqueous solutions in threshold determinations might relieve some facilities from the obligation to report for aqueous ammonia.

The following effective dates and requirements apply to this final rule.

1. *Deletion of ammonium sulfate (solution).* The deletion of ammonium sulfate (solution) is effective for the 1994 reporting year (reports due July 1, 1995).

2. *Deletion of ammonium nitrate (solution).* The deletion of ammonium nitrate (solution) is effective for the 1995 reporting year (reports due July 1, 1996). EPA is delaying the effective date of this provision to coincide with the effective date of the recently-added water dissociable nitrate compounds category (59 FR 61432, November 30, 1994). The requirement that aqueous ammonia from ammonium nitrate (solution) be reported under the ammonia listing as 10 percent of total aqueous ammonia is also effective for the 1995 reporting year.

3. *Reporting 10 percent of total aqueous ammonia.* The requirement that 10 percent of total aqueous ammonia be reported under the ammonia listing for aqueous ammonia from all water dissociable ammonium salts (except ammonium nitrate (solution)) is effective for the 1994 reporting year. EPA believes that facilities that have been subject to record keeping requirements for ammonium sulfate (solution) already have the information needed to calculate threshold and release quantities for 10 percent total aqueous ammonia. Specifically, a facility would multiply the appropriate ammonium sulfate (solution) quantities by 2.7 percent, which represents 10 percent of the weight percent of aqueous ammonia from ammonium sulfate (solution).

Facilities that currently report or make threshold determinations for the aqueous ammonia from other water dissociable ammonium salts may not be keeping the kind of information in their records that would allow them to calculate 10 percent of total aqueous ammonia from their un-ionized ammonia data. EPA recognizes that issuance of this final rule has come so close to the reporting deadline that some of these facilities may not be able to comply with this requirement before the July 1, 1995 reporting date. Accordingly, for this one year, such facilities can continue to use the pH and temperature of their process and waste streams to estimate the quantities of un-ionized ammonia present for threshold and release determinations, respectively.

Facilities that have already reported under the current requirements are not required to resubmit their reports under the new requirements. They can, however, withdraw their reports if they did not meet the threshold for ammonia under the revised ammonia listing.

V. Rulemaking Record

The record supporting this final rule is contained in docket number OPPTS-400032B. All documents, including an index of the docket, are available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office from noon to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at EPA Headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

VI. References

(1) USEPA/OPPT. ''Response to Comments Received on the March 30, 1990 and April 3, 1995 Proposed and Amended Proposed Rules to Delete Ammonium Sulfate (solution) from the EPCRA Section 313 List'', U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics, Washington, DC (1995).

(2) Tuttle, Jr., T. R., ''Ammonium Hydroxide: What is its Structure?'', Letters to the Editor No. 1 and No. 3, *Journal of Chemical Education*, 68, (1991), p. 533.

(3) Grunwald, E.; Ralph, E. K., ''Kinetic Studies of Hydrogen-Bonded Solvation Complexes of Amines in Water and Hydroxylic Solvents'', *Accounts of Chemical Research*, 4, (1971), pp. 107-113.

(4) Bertie, J.E.; Morrison, M. M., ''The Infrared Spectra of the Hydrates of Ammonia, $NH_3 \cdot H_2O$ and $NH_3 \cdot 2H_2O$'', *Journal of Chemical Physics*, 73, (1980), pp. 4832-4836.

(5) Bertie, J.E.; Shehata, M. R., ''Ammonia Dihydrate: Preparation, X-Ray Powder Diffraction Pattern and Infrared Spectrum of $NH_3 \cdot H_2O$ and $NH_3 \cdot 2H_2O$ at 100 K'', *Journal of Chemical Physics*, 81, (1984), pp. 27-29.

(6) Yoke, J., ''Ammonia and Water Molecules Engaged in Hydrogen Bonding'', Letter to the Editor No.2, *Journal of Chemical Education*, 68, (1991), p. 533.

(7) Yoke, J., ''Ammonium Hydroxide Does Not Exist'', *Journal of Chemical Education*, 66, (1989), p. 310.

(8) USEPA/OW. ''Ambient Water Quality Criteria for Ammonia - 1984'', U. S. Environmental Protection Agency, Office of Water Regulations and

Standards, Washington, DC, EPA 440/5-85-001 (1985).

VII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, it has been determined that this final rule is not ''significant'' and therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities would be significantly affected by the final rule. Because the final rule does not create any new requirements and consolidates other requirements, it would not significantly affect facilities, including small entities.

C. Paperwork Reduction Act

This final rule does not result in any new information collection requirements subject to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

D. Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, EPA has assessed the effects of this regulatory action on State, local and tribal governments, and the private sector. This action does not result in the expenditure of $100 million or more by any State, local or tribal governments, or by anyone in the private sector. The cost associated with this action are described in the Executive Order 12866 unit above.

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: June 26, 1995.

Lynn R. Goldman,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

2. In § 372.65 by revising the entries for ammonia and ammonium nitrate (solution) and removing the entire entry for ammonium sulfate (solution) under paragraph (a), and revising the CAS No. entries for 6484-52-2 and 7664-41-7 and removing the entire CAS No. entry for 7783-20-2 under paragraph (b) to read as follows:

§ 372.65 Chemicals and chemical categories to which this part applies.

* * * * *

(a) * * *

Chemical name	CAS No.	Effective date
* * * * *	* *	
Ammonia (includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources; 10 percent of total aqueous ammonia is reportable under this listing)	7664-41-7	1/1/87
Ammonium nitrate (solution)	6484-52-2	1/1/87*
* * * * *	* *	

*Note: Ammonium nitrate (solution) is removed from this listing; the removal is effective July 2, 1995, for the 1995 reporting year.

(b) * * *

CAS No.	Chemical name	Effective date
	* * * * * * *	
6484–52–2	Ammonium nitrate (solution)	1/1/87*
	* * * * * * *	
7664-41-7	Ammonia (includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources; 10 percent of total aqueous ammonia is reportable under this listing)	1/1/87
	* * * * * * *	

*Note: CAS No. 6484–52–2 is removed from this listing; the removal is effective July 2, 1995, for the 1995 reporting year.

* * * * *

[FR Doc. 95–16184 Filed 6–29–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 372

[OPPTS–400057A; FRL–4946–3]

Sulfuric Acid; Toxic Chemical Release Reporting; Community Right-To-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is modifying the listing for sulfuric acid on the list of toxic chemicals subject to section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) in response to a petition. Specifically, EPA is deleting non-aerosol forms of sulfuric acid from the list of toxic chemicals subject to section 313. This deletion of non-aerosol forms of sulfuric acid is based on EPA's review of the available data on the health and environmental effects of sulfuric acid. EPA has concluded that these forms of sulfuric acid cannot reasonably be anticipated to cause adverse effects on human health or the environment under normal exposure scenarios. Therefore, these forms of sulfuric acid meet the EPCRA section 313(d)(3) deletion criteria. By promulgating this rule, EPA is relieving facilities of their obligation to report releases of non-aerosol forms of sulfuric acid that occurred during the 1994 reporting year, and releases that will occur in the future.

DATES: This rule is effective June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, 202-260-9592, e-mail: doa.maria@epamail.epa.gov, for specific information on this final rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is issued under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). When enacted, section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added and deleted chemicals from the original statutory list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition has been denied.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued a statement of policy and guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has published a statement clarifying its interpretation of the section 313(d)(2) and (d)(3) criteria for adding and deleting chemicals from the section 313 toxic chemical list (November 30, 1994, 59 FR 61439).

II. Description of Petition and Proposed Action

On December 24, 1990, EPA received a petition from the Environmental Policy Center on behalf of American Cyanamid to qualify the listing of sulfuric acid by requiring release reporting only for sulfuric acid aerosols and deleting other forms of sulfuric acid from the list of chemicals under section 313. The petitioner maintains that non-aerosol forms of sulfuric acid do not meet the statutory criteria for acute, chronic, or environmental effects under normal exposure scenarios.

Following a review of the petition, EPA issued a proposed rule in the **Federal Register** of July 26, 1991 (56 FR 34156), proposing to delete non-aerosol forms of sulfuric acid from the list of toxic chemicals under EPCRA section 313. EPA's proposal was based on its conclusion that these forms of sulfuric acid meet the EPCRA section 313(d)(3) criteria for deletion from the list. EPCRA provides at section 313(d)(3) that ''[a] chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph [(d)(2)(A)-(C)].'' Specifically, in the proposed rule, EPA concluded preliminarily that there is not sufficient evidence to establish that non-aerosol forms of sulfuric acid cause adverse acute human health effects, chronic human health effects, or environmental toxicity. This preliminary conclusion, which is detailed in the proposed rule, was based on the Agency's review of the petition, as well as other relevant materials included in the docket.

In the **Federal Register** of February 1, 1993 (58 FR 6609), EPA re-opened the comment period for the proposal to modify the listing of sulfuric acid and announced that a public hearing would be held to address petitions to modify the listings for both sulfuric and hydrochloric acids (a petition was received from BASF Corporation, E.I. du Pont de Nemours and Company, Monsanto, and Vulcan Chemical Company on September 11, 1991, to modify the listing of hydrochloric acid by deleting non-aerosol forms). In this notice, EPA requested comment on a number of issues raised by commenters in response to the proposed rule to modify the listing for sulfuric acid that also apply to hydrochloric acid. Specifically, these issues were: (1) The extent to which EPA should rely on existing regulatory controls under other statutes to support a determination that continuous or frequently recurring releases of these acids are unlikely to cause adverse acute human health effects or significant adverse environmental effects; (2) the sufficiency of the evidence required to determine if the non-aerosol forms of these acids meet the EPCRA section 313(d)(2)(A) and (C) criteria; (3) whether EPA should consider accidental release data in making a finding for environmental effects under EPCRA section 313(d)(2)(C); (4) the relevance of release reporting under other statutory provisions to the issue of whether non-aerosol forms of these acids meet the listing criteria; and (5) other reporting options.

The public meeting was held on March 3, 1993. At this meeting, EPA discussed the specific issues described in the February 1, 1993 notice and presented data on accidental and routine releases of sulfuric and hydrochloric acids. Comments were

then presented by the public. Responses to the major issues raised by the comments presented and/or submitted at the public meeting concerning sulfuric acid are addressed in this rulemaking. Comments specific to the petition to modify the listing for hydrochloric acid will be addressed at the time a final regulation is promulgated.

III. Final Rule and Rationale for Delisting

A. Comments on the Proposed Modification to Delete Non-Aerosol Forms of Sulfuric Acid

EPA received 42 comments on the original notice proposing the deletion of non-aerosol forms of sulfuric acid from the EPCRA section 313 toxic chemical list, a majority of which supported the proposal. Thirteen commenters opposed the proposal arguing that: (1) The modification defeats the intent of EPCRA, and (2) the Agency had not adequately proven that non-aerosol forms of sulfuric acid cannot reasonably be anticipated to cause adverse human health or environmental effects. An additional 26 comments were received in response to the **Federal Register** notice (58 FR 6609) re-opening the comment period. Of these additional commenters, four opposed the deletion of non-aerosol forms of sulfuric acid. The major issues addressed by the commenters for both the proposed rule and the re-opening of the comment period are summarized below. A detailed response to all of the comments submitted is available in the document ''Summary of Response to Public Comments Submitted on the Proposal to Modify the Sulfuric Acid Listing (56 FR 34156) and the Notice Re-opening the Public Comment Period (58 FR 6609)'' which is contained in the docket for this rulemaking (Ref. 1).

1. *Accidental releases.* The Environmental Defense Fund (EDF) and the Consumer Policy Institute cite EPA's Accidental Release Information Program (ARIP) as documenting significant adverse environmental effects as a result of releases of non-aerosol forms of sulfuric acid. EDF adds that approximately half of the sulfuric acid accidents reported in the ARIP data base cite environmental damages. Furthermore, they contend that EPA's Acute Hazardous Events (AHE) data base describes sulfuric acid as the most frequently reported substance involved in chemical accidents. EDF also adds that it is important to recognize that neither the ARIP nor AHE data bases contain a complete record of accidental chemical releases, therefore, the actual number is presumably higher.

EDF, the Minnesota Emergency Response Commission (MERC), the National Environmental Law Center, the Department of Drainage and Sanitation, County of Onondaga, NY, and the Consumer Policy Institute also believe that EPA must consider the effects from both accidental and routine releases when evaluating listing and delisting petitions. EDF adds that Congress specifically excluded the consideration of accidental releases from EPCRA section 313(d)(2)(A) by the phrase ''continuous, or frequently recurring releases''; however, since that phrase is lacking from EPCRA section 313(d)(2)(C), EPA is required to consider the significance of impacts from accidental, as well as routine, releases. Ecolab further adds that EPA should consider factual information on accidental releases and not base listing decisions on the possibility of accidents.

EPA recognizes that an accidental spill of non-aerosol sulfuric acid could potentially result in adverse effects on the environment. However, even if an accidental spill were reported under EPCRA section 313, it may not be identifiable as a spill, since section 313 reporting requires annual release numbers which aggregate routine and accidental releases. Therefore, the Toxics Release Inventory (TRI) data are not the most appropriate resource for identifying the specific effects from accidental releases of a reported chemical. In addition, these data would not be immediately available under EPCRA section 313 and, therefore, would have little utility for emergency response personnel. In the proposal to modify the listing for sulfuric acid, EPA discussed the other more appropriate mechanisms through which spills of sulfuric acid would be reported and data made immediately available (e.g., the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 103 and EPCRA section 304). Therefore, EPA does not believe that this delisting will affect the availability of accidental release data for non-aerosol forms of sulfuric acid.

Furthermore, EPA has reviewed the accidental release data specific to sulfuric acid. EPA's review of available information on non-aerosol releases of concentrated sulfuric acid, including the data contained in ARIP and AHE, indicates that accidental releases of sulfuric acid to surface waters are infrequent and isolated occurrences. In fact, in only a few circumstances could evidence of adverse environmental effects (such as fish kills) be found. As such, the Agency believes that the limited number of accidental releases of non-aerosol forms of sulfuric acid do not result in significant adverse effects of sufficient seriousness to warrant continued listing under EPCRA section 313. A description of EPA's analysis is contained in the document entitled ''Analysis of Accidental Release Data for Non-Aerosol Forms of Sulfuric Acid'' that is available in the docket for this rulemaking (Ref. 2).

The Bekaert Corporation, Chemical Manufacturers Association (CMA), Air Products and Chemicals Inc., American Cyanamid Company, Agrico Chemical Company, Armco Steel Company, Rhone Poulenc, Aluminum Company of America, Battery Council International, and the Acrylonitrile Group state that accidental releases of sulfuric acid are adequately covered by other statutory mechanisms (e.g., EPCRA section 304, CERCLA section 103). They contend that these other mechanisms are more effective and more appropriate for capturing accidental release information. Accidental release information is reported immediately under these statutes versus the delayed reporting (and even further delayed availability of data) under TRI. BASF Corporation, E.I. du Pont de Nemours, Monsanto Company, Vulcan Materials Company, Eli Lilly and Company, and The Fertilizer Institute state that the statutory intent of EPCRA section 313 is to cover annual reporting on releases of certain chemicals that occur during normal business operations. The commenters further assert that Congress made a clear distinction between this purpose and the purpose of EPCRA section 304 reporting on accidental releases.

EPA agrees that accidental releases are more appropriately captured under EPCRA section 304 and CERCLA section 103 for purposes of assisting emergency responders and identifying specific adverse effects from a spill. While it may be true that Congress clearly defined the different purposes of EPCRA section 304 and EPCRA section 313, it is not accurate to state that EPCRA section 313 only covers releases from routine business operations. Accidental releases are reported in aggregate with releases from routine operations under EPCRA section 313.

2. *Whether sulfuric acid non-aerosols meet the statutory criteria.* Six commenters (the New Jersey Environmental Federation, EDF, Coalition Against Toxics, National Environmental Law Center, Northwest Illinois Audubon Society, and the Alaska Health Project) state that EPA has not sufficiently demonstrated that non-aerosol forms of sulfuric acid do

not meet the EPCRA section 313(d)(2) criteria.

As explained in Unit III.B. of this preamble, EPA has concluded, based on the Agency's evaluation of sulfuric acid's toxicity and the levels of sulfuric acid exposure to which humans and the environment may be subject, that non-aerosol forms of sulfuric acid do not meet the EPCRA section 313(d)(2) criteria.

The National Environmental Law Center, Onondaga, NY Department of Drainage and Sewage, and EDF state that Publicly Owned Treatment Works (POTWs) workers are endangered by the corrosion and toxicity caused by the large amounts of sulfuric acid released to POTWs. Furthermore, they contend that emergency response personnel are harmed by transportation and plant accidents and that these risks may not be proportional to the ''routine'' releases as evaluated by the Agency in the proposed rule.

EPA agrees that the non-aerosol forms of sulfuric acid are acutely toxic at a low pH. The Agency believes that for chemicals that are acutely toxic, such as concentrated non-aerosol forms of sulfuric acid, the statute precludes consideration of only accidental, non-routine releases when making a determination of whether a chemical meets the criteria of EPCRA section 313(d)(2)(A). Further, the Agency has found that there is no evidence that non-aerosol sulfuric acid releases cause adverse effects to human health under ordinary exposure scenarios.

Several commenters state that this delisting is indefensible from an environmental perspective because sulfuric acid causes acidification, which harms aquatic life and vegetation. The Kentucky Resources Council and the National Environmental Law Center argue that there is insufficient data to state with any certainty whether the releases of non-aerosol forms of sulfuric acid will cause environmental harm. The Environmental Health Coalition adds that sulfuric acid is highly corrosive to wildlife, particularly aquatic life and that it makes no sense to delist a chemical whose toxicity at the time of release is not known and may be very high.

The toxic properties of non-aerosol forms of sulfuric acid are dependent upon concentration and duration of exposure. EPA believes that releases of non-aerosol forms of sulfuric acid in concentrations that are corrosive will almost exclusively exist as a result of accidental releases. Further, EPA believes that the occurrence of these accidental releases that result in adverse environmental effects is limited. As a result, EPA does not believe that non-aerosol forms of sulfuric acid cause an adverse effect on the environment of sufficient seriousness to warrant continued reporting under EPCRA section 313.

The Kentucky Resources Council and the National Environmental Law Center contend that EPA did not provide any information concerning the pH levels typically associated with sulfuric acid releases so that the assertion that all releases of sulfuric acid of a pH less than 6 will not result in environmental harm is unsubstantiated, since the Agency recognizes that at certain low pH levels acute toxicity and other environmental effects occur.

The commenters are correct in their claim that EPA did not provide any pH levels associated with sulfuric acid releases in the proposed rule. However, EPA did provide some pH estimates as a result of modelling from data reported to the Emergency Response Notification System (ERNS) at the March 3, 1993 public meeting. The complete results of this modelling are contained in the document entitled ''Analysis of Accidental Release Data for Non-Aerosol Forms of Sulfuric Acid'' that is available in the docket for this rulemaking (Ref. 2). The model used for estimating these pH levels did not take into account other factors (e.g., buffering) that affect the pH once the release has occurred. Therefore, it is difficult to assess the actual pH in the environment. Furthermore, EPA did not make the assertion that releases of sulfuric acid at a pH less than 6 would not result in environmental harm; however, the Agency did assert in the proposed rule (56 FR 34157) that releases of sulfuric acid solutions *at* or *above* pH 6 are not expected to result in adverse environmental effects. As stated above, EPA recognizes that at low pH non-aerosol releases may cause an adverse effect on the environment. However, based on a review of accidental release reports, EPA believes these incidents are limited and are not of sufficient seriousness to warrant continued reporting under EPCRA section 313.

EDF adds that there are numerous industries that are not regulated under the Clean Water Act's (CWA) pre-treatment program, and thus may not be subject to pH limitations. If facilities discharging directly to surface waters are not regulated for pH, and/or facilities have serious pH excursions, environmental damage can result.

Discharge permits issued under the CWA ordinarily restrict the pH range of these and other discharges. However, EPA did not limit its analyses to CWA restrictions. Although permit restrictions, by themselves, are not an adequate grounds for dismissing possible impacts of releases of non-aerosol forms of sulfuric acid, taken together with other data on sulfuric acid, EPA has not uncovered any information identifying these discharges as reasonably anticipated to cause significant adverse environmental effects of sufficient seriousness to warrant reporting.

BP Chemicals, E.I du Pont de Nemours, Air Products and Chemicals, American Petroleum Institute (API), Adolph Coors Company, Pennzoil Company, and CMA agree with the Agency's position that non-aerosol forms of sulfuric acid cannot reasonably be anticipated to cause adverse effects to human health or the environment under normal exposure scenarios. The Battery Council International concurs with the Agency's finding on non-aerosol forms of sulfuric acid and requests that the Agency re-evaluate the data on aerosol forms of sulfuric acid as well.

As stated in the proposed rule (56 FR 34158), the Agency has determined that aerosol forms of sulfuric acid meet the EPCRA section 313(d)(2) criteria and cannot be delisted under EPCRA section 313(d)(3).

3. *Effect on the Right-to-Know program*. Six commenters (New Jersey Environmental Federation, Northwest Illinois Audubon Society, EDF, MERC, New Jersey Department of Environmental Protection and Energy (NJDEPE), and the Kansas Department of Health and Environment (KDHE)) oppose the delisting of non-aerosol forms of sulfuric acid on the grounds that it defeats the intent of the Right-to-Know program. Kentucky Resources Council expresses concern for the full implementation of the Community Right-to-Know provisions of EPCRA section 313. This commenter adds that there are severe limitations in the existing data bases concerning human health effects from exposure to sulfuric acid. In addition, deletion of non-aerosol forms of sulfuric acid will result in a significant gap in reporting, since ''routine'' permitted releases are not captured under CERCLA and the 1,000 pound reportable quantity will allow significant releases to go unreported. The Environmental Health Coalition believes the delisting of sulfuric acid limits and weakens the effectiveness of TRI as a comprehensive data base of Right-to-Know information.

The National Environmental Law Center states that other sources of data on sulfuric acid spills and releases are no substitute for section 313 reporting due to factors of accessibility,

compliance, and consistency. Also, the National Environmental Law Center and the EDF are concerned about the loss of data provided under the Pollution Prevention Act (PPA), which they contend would be of particular concern for sulfuric acid because of the risks and amounts associated with sulfuric acid use and wastes prior to treatment.

EPA agrees that by delisting non-aerosol forms of sulfuric acid, information on the management of this form of the chemical may be more difficult to obtain. However, EPA believes that adequate information on non-aerosol forms of sulfuric acid will still be available through other more appropriate sources. For example, sulfuric acid is a hazardous substance under CERCLA and an extremely hazardous substance under EPCRA, therefore releases of greater than 1,000 pounds must be reported to the National Response Center (NRC) under CERCLA section 103 and to the State Emergency Response Commission (SERC) and the Local Emergency Planning Committee (LEPC) under EPCRA section 304. Written follow-up information on the spill, and on the potential health and environmental effects, is also required to be submitted to State and local authorities. In addition, data on the quantity and type of storage, as well as the physical and health hazards, must be submitted for sulfuric acid under sections 311 and 312 of EPCRA. These inventory data are submitted to SERCs, LEPCs, and local fire departments for chemical accident prevention purposes, to assist local emergency response personnel, and to inform the public of chemicals in communities. Furthermore, emergency planning information is collected at the State and local level for sulfuric acid under section 302 of EPCRA, if more than 1,000 pounds is on-site at a facility at any given time. EPA believes that difficulty in obtaining information available through these sources should be addressed within the context of the appropriate statute and that EPCRA section 313 should not be used as a surrogate for other environmental statutes.

EPA does not agree that the intent of EPCRA section 313 is being violated by this modification. If a chemical (or form of a chemical) does not meet the EPCRA section 313(d)(2) criteria, EPA believes that: (1) It is appropriate to delete the chemical from the toxic chemical list, and (2) this type of deletion does not violate the intent of the statute. Furthermore, the statutory criteria clearly require that EPA consider the potential health and environmental effects of a chemical in determining whether it should be on the EPCRA section 313 toxic chemical list. EPA believes that the PPA data elements supplement TRI reporting for those chemicals that meet the statutory toxicity criteria.

Armco Steel Corporation, American Cyanamid Company, Battery Council International, Adolph Coors Company, CMA, and Air Products and Chemicals state that even though non-aerosol forms of sulfuric acid will not be reported under EPCRA section 313, they are still subject to the rest of EPCRA and other more appropriate reporting requirements to ensure that there is not a loss of significant release information.

Although it is not a factor in listing/delisting decisions, EPA agrees that releases of non-aerosol forms of sulfuric acid will still be reported under other regulatory mechanisms and the delisting of these forms of sulfuric acid under EPCRA section 313 should not result in a loss of significant release data. As stated above, the statutory criteria clearly relate to health and environmental effects for determining whether a chemical should be on the EPCRA section 313 toxic chemical list.

4. *Reliance on other regulatory mechanisms.* EDF states that it is inappropriate for EPA to rely solely on regulations developed under other statutes to assure the public that currently reported EPCRA releases will not result in adverse human health or environmental effects. The commenter adds that the TRI data were meant to be a check on other statutory programs, ensuring that unregulated and inadequately monitored chemicals are at least reported on an annual basis. The commenter cites EPA's acknowledgement of this fact in another delisting decision where the Agency stated that ''permit restrictions, by themselves, are not an adequate grounds for dismissing possible impacts of [sodium hydroxide] releases'' (see 54 FR 51298). In addition, the commenter contends that the shortcomings of the CWA were addressed in the preamble to the proposal to delete non-aerosol forms of sulfuric acid by stating that ''pH *may be* subject to both technology-based and water quality-based limitations.'' The commenter adds that this generic statement clouds the reality that some facilities discharging to sewers may not be regulated for pH. Furthermore, the commenter contends there are numerous industries that are not regulated under the CWA's pre-treatment program. Due to the nature of reporting for neutralized acids under EPCRA section 313 (only below pH 6) and the pH limits of the CWA, it is clear that EPCRA is capturing the more acidic (toxic) discharges.

The commenter also believes that the Resource Conservation and Recovery Act (RCRA) is inadequate for ensuring that there will be no adverse environmental effects from land treatment and disposal of non-aerosol forms of sulfuric acid.

While EPA does not rely solely on data from permits or other regulations, the Agency does consider this information in concert with other data. In the case of non-aerosol forms of sulfuric acid, EPA has not uncovered any information to indicate that non-aerosol forms of sulfuric acid can be reasonably anticipated to cause significant adverse health effects or environmental effects of sufficient seriousness to warrant reporting.

Armco Steel Company, Air Products and Chemicals, BASF Corporation, E.I. du Pont de Nemours, Monsanto Company, Vulcan Materials Company, Aluminum Company of America, Eli Lilly and Company, American Cyanamid Company, Battery Council International, Rhone Poulenc Inc., Edison Electric Institute, CMA, and the Acrylonitrile Group state that any threat to the public that may exist from a release of non-aerosol forms of sulfuric acid is being addressed by a number of existing regulations. Ecolab, Air Products and Chemicals, BASF Corporation, E.I. du Pont de Nemours, Monsanto Company, Vulcan Materials Company, American Cyanamid Company, Edison Electric Institute, CMA, Pharmaceuticals Manufacturers Association, and the Acrylonitrile Group assert that non-compliance with other statutes must be addressed through the enforcement provisions of those statutes and their enabling regulations and that concern for compliance under other statutes should not be used in EPCRA section 313 listing/delisting decisions. EPCRA provides no additional enforcement authority to address non-compliance issues.

EPA agrees with these commenters that non-compliance with other statutes should be addressed through those regulations. However, the Agency has also found that the TRI data are useful in identifying facilities that may not be in compliance with a particular statute. For chemicals that meet the statutory criteria this is an appropriate use of the TRI data. Nonetheless, the Agency does not believe that issues of noncompliance with other regulations should be considered in listing/delisting determinations.

5. *Effect on pollution prevention.* Six commenters (the New Jersey

Environmental Federation, Coalition Against Toxics, Northwest Illinois Audubon Society, EDF, MERC, and the Consumer Policy Institute) state that by delisting non-aerosol forms of sulfuric acid, EPA is removing the incentive for facilities to neutralize discharges to a pH of 6 or above.

The National Environmental Law Center, MERC, and NJDEPE also believe that the delisting of non-aerosol forms of sulfuric acid will undermine pollution prevention efforts and is contrary to the intent of the PPA.

EPA concedes that by deleting non-aerosol forms of sulfuric acid, the incentive for facilities to neutralize their discharges may be lessened. However, there are other requirements (e.g., CWA pre-treatment program) that still require facilities to neutralize their wastestreams prior to discharge. EPA does not agree that this delisting action will undermine pollution prevention efforts. There are numerous other incentives for facilities to reduce their releases of a specific chemical, including financial incentives. In addition, facilities will be able to focus their pollution prevention efforts and report their progress on the form of sulfuric acid that poses the greatest hazard, the aerosol forms.

6. *Other listing options.* Armco Steel Company, Air Products and Chemicals, Eli Lilly and Company, Edison Electric Institute, and CMA oppose the options mentioned by EPA in the February 1, 1993 notice (58 FR 6609) either because the Agency has no statutory authority to create a category for pH releases or to promulgate peak release reporting rules.

American Cyanamid Company, BASF Corporation, E.I. du Pont de Nemours, Monsanto Company, Vulcan Materials Company, and the Acrylonitrile Group state that the listing options presented in the February 1, 1993 notice (58 FR 6609; see Unit II. of the preamble) go beyond the scope of the proposed rule on delisting non-aerosol forms of sulfuric acid and should be considered separately.

At this time, EPA is not considering the other listing options discussed in the February 1, 1993 notice.

B. Rationale for Delisting and Conclusions

Sulfuric acid aerosols meet the toxicity criteria of section 313(d)(2). EPA's decision to delete non-aerosol forms of sulfuric acid is based on the Agency's evaluation of sulfuric acid's toxicity and the levels of sulfuric acid exposure to which humans and the environment may be subject. The non-aerosol forms of sulfuric acid are acutely toxic at low pH; however, there is no information to indicate that non-aerosol forms of sulfuric acid present a health or environmental risk under ordinary exposure scenarios. Therefore, the Agency does not believe that non-aerosol sulfuric acid releases will cause adverse effects to human health or the environment under ordinary exposure scenarios. The substance's toxic properties are dependent upon concentration and duration of exposure. Only under aberrant conditions of exposure (e.g., spills onto the skin, deliberate ingestion) do solutions of sulfuric acid pose a potentially serious health hazard.

EPA has concluded that non-aerosol forms of sulfuric acid do not meet the statutory criteria of section 313(d)(2)(A) regarding acute human health effects; specifically, that the ''chemical is known to cause or can reasonably be anticipated to cause significant adverse human health effects at concentration levels that are reasonably likely to exist beyond facility boundaries as a result of continuous or frequently recurring releases.'' EPA's review of the toxicity and exposure information indicates that although sulfuric acid in concentrated forms is acutely toxic, it is unlikely that persons will be exposed to acutely toxic concentration levels beyond facility boundaries as ''a result of continuous or frequently recurring releases.''

Also, EPA has concluded that non-aerosol forms of sulfuric acid do not meet the chronic toxicity listing criteria in section 313(d)(2)(B), because the chemical in its non-aerosol forms is not known to cause nor can reasonably be anticipated to cause chronic health effects. The environmental listing criterion, 313(d)(2)(C), also is not met because the non-aerosol forms of sulfuric acid are not known to cause nor can be reasonably anticipated to cause a significant adverse effect on the environment of sufficient seriousness to warrant release reporting.

Although not a factor in the delisting decision, other statutory mechanisms exist by which information on spills of sulfuric acid will be made available to the public. These mechanisms have been detailed in Unit III.A. of this preamble. Deleting non-aerosol forms of sulfuric acid from the section 313 list will not result in any significant reduction in the information now available to the public concerning spills of sulfuric acid. Since reporting of spills under section 313 is only required to be submitted to EPA as part of an overall annual release number, no direct and immediate notice to the public of such an accidental release or spill of sulfuric acid is available through section 313 reports or through the TRI data base, i.e., only annual release figures are available.

Therefore, EPA is modifying the listing for sulfuric acid by deleting non-aerosol forms of sulfuric acid. For the purposes of this deletion, EPA considers the term aerosol to cover any generation of airborne sulfuric acid (including mists, vapors, gas, or fog) and without regard to particle size. This action to delete non-aerosol forms of sulfuric acid from the section 313 list is not meant to suggest that the Agency considers sulfuric acid to be a ''safe'' chemical. Rather, this action reflects the fact that non-aerosol forms of the chemical do not meet the toxicity criteria set forth in EPCRA section 313(d)(2).

Deleting non-aerosol forms has implications for the threshold determination for reporting under section 313. For purposes of threshold determination under 40 CFR 372.25, any generation of airborne sulfuric acid (including mists, vapors, gas, or fog) without regard to particle size, is considered manufacture of sulfuric acid aerosols. The quantity of airborne sulfuric acid manufactured, not the amount released, would be compared with the reporting thresholds in EPCRA section 313(f). Generation of airborne sulfuric acid is expected to occur from, but is not limited to: production or processing of sulfur trioxide (SO_3), due to the extremely rapid reaction of sulfur trioxide with atmospheric water within the process or facility; production or processing of solutions of sulfuric acid; and volatilization or vaporization of sulfuric acid from manufacture or processing.

IV. Precedents for Modified Listings

There are precedents for qualified chemical listings under EPCRA section 313. The original list established by Congress contained a number of qualified listings including: aluminum (fume or dust), ammonium nitrate (solution), asbestos (friable), yellow or white phosphorus, vanadium (fume or dust), and zinc (fume or dust). Also, EPA recently qualified the aluminum oxide listing by exempting non-fibrous forms of aluminum oxide from the reporting requirements so that only fibrous aluminum oxide is subject to reporting (40 CFR part 372). EPA found that there was no evidence that non-fibrous forms of aluminum oxide cause adverse human health or environmental effects as specified under section 313. The decision to retain fibrous forms of aluminum oxide was based on evidence that exposure to fibrous forms of this chemical can reasonably be anticipated to cause cancer in humans. In addition, EPA recently added a category, water

dissociable nitrate compounds, to the EPCRA section 313 list (59 FR 61460) with a qualifier that limits reporting to aqueous solutions. The Agency had originally proposed (59 FR 1825) to list nitrate ion; however, many commenters argued that what the Agency actually proposed was a category of nitrate compounds that dissociate in water. EPA agreed with the commenters and used the qualified category in the final listing. This category indicates that only water dissociable nitrate compounds that are manufactured, processed, or otherwise used as an aqueous solution at a facility are subject to reporting.

V. Effective Date

This action becomes effective June 30, 1995. Thus, the last year in which facilities had to file a TRI report for non-aerosol forms of sulfuric acid was 1994, covering releases and other activities that occurred in 1993.

Section 313(d)(4) provides that ''[a]ny revision'' to the section 313 list of toxic chemicals shall take effect on a delayed basis. EPA interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list. For deletions, EPA may, in its discretion, make such actions immediately effective. An immediate effective date is authorized, in these circumstances, under 5 U.S.C. section 553(d)(1) because a deletion from the section 313 list relieves a regulatory restriction.

EPA believes that where the Agency has determined, as it has with these non-aerosol forms of sulfuric acid, that a chemical does not satisfy any of the criteria of section 313(d)(2)(A)-(C), no purpose is served by requiring facilities to collect data or file TRI reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. This construction of section 313(d)(4) is consistent with previous rules deleting chemicals from the section 313 list. For further discussion of the rationale for immediate effective dates for EPCRA section 313 delistings, see 59 FR 33205.

VI. Rulemaking Record

The record supporting this decision is contained in docket control number OPPTS–400057A. All documents, including an index of the docket, are available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office from noon to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at EPA Headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

VII. References

(1) USEPA/OPPT. Summary of Response to Public Comments Submitted on the Proposal to Modify the Sulfuric Acid Listing (56 FR 34156) and the Notice Re-opening the Public Comment Period (58 FR 6609). U.S. Environmental Protection Agency, Washington, DC (1995).

(2) USEPA/OPPT. Analysis of Accidental Release Data for NonAerosol Forms of Sulfuric Acid. U.S. Environmental Protection Agency, Washington, DC (1995).

VIII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Pursuant to the terms of this Executive Order, it has been determined that this final rule is not ''significant'' and therefore not subject to OMB review.

EPA estimates that this final rule will result in 4,258 to 5,476 fewer reports being submitted for sulfuric acid. This will reduce industry's reporting costs by $11.1 to $13.7 million per year, and EPA's costs by $300,000 to $400,000 per year.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities would be significantly affected by the final rule. Because this final rule eliminates an existing requirement, it would result in cost savings to facilities, including small entities.

C. Paperwork Reduction Act

This final rule does not have any information collection requirements subject to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: June 26, 1995.

Lynn R. Goldman,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended as follows:

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

§ 372.65 [Amended]

2. Section 372.65(a) and (b) are amended by adding the parenthetical to the entry for sulfuric acid to read ''Sulfuric acid (acid aerosols including mists, vapors, gas, fog, and other airborne forms of any particle size)'' under paragraph (a) and for CAS number entry 7664-93-9 under paragraph (b).

[FR Doc. 95–16185 Filed 6–29–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–255; RM–7781]

Radio Broadcasting Services; Nowata and Collinsville, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of BSB Communications, substitutes Channel 268C3 for Channel 268A at Nowata, Oklahoma, reallots Channel 268C3 from Nowata to Collinsville, Oklahoma, and modifies Station KLTO's construction permit accordingly. *See* 56 FR 46144, September 10, 1991. Channel 268C3 can be allotted to Collinsville with a site restriction of 1.8 kilometers (1.1 miles) east, at coordinates North Latitude 36–21–50 and West Longitude 95–49–16, to accommodate petitioner's desired transmitter site and avoid short-spacings to Station KXOJ-FM, Channel 265A, Sapulpa, Oklahoma, and Station KEOK, Channel 269C3, Tahlequah, Oklahoma. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro or Stanley Schmulewitz (engineering issues), Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 91–255, adopted June 19, 1995, and released June 27, 1995. The full text of this Commission decision is available forinspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–

3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 268A at Nowata and by adding Collinsville, Channel 268C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–16116 Filed 6–29–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 383

[FHWA Docket No. MC–95–16]

Commercial Driver's License; Waiver for Pyrotechnics Industry

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The FHWA is issuing its decision generally denying a waiver from the commercial driver's license (CDL) regulations (49 CFR Part 383) to certain drivers employed by the pyrotechnics industry. The FHWA is granting alternate relief which would enable a willing State to substitute, in very limited circumstances, demonstrated training for the requirement of a written hazardous materials endorsement examination. The American Pyrotechnics Association submitted a petition on March 6, 1995, requesting waivers from the CDL testing and licensing standards for certain drivers transporting fireworks to displays during the period of Independence Day celebrations. Under the notice of petition, request for comments, issued May 10, 1995 (60 FR 24820), part-time drivers who have an otherwise valid driver's license and a good driving record, as well as licenses or permits issued by applicable State or local agencies certifying that they are approved pyrotechnic operators, would have been eligible for a waiver from the CDL standards. As proposed, States would have been authorized to issue waivers for the transportation of less than 500 pounds of fireworks classified as DOT Class 1.3G explosives, from June 30 through July 6 of each year, provided that the vehicles transporting such fireworks had a gross vehicle weight rating (GVWR) of less than 10,001 pounds and were operated within 300 miles of the site of origin. The FHWA requested public comment on whether, if granted, the proposed waiver would be contrary to the public interest or diminish the safe operation of commercial motor vehicles. The comment period closed on June 9, 1995. Based upon the information submitted by commenters, and a late rebuttal to the adverse comments presented on behalf of the petitioners, the FHWA has concluded that it does not have the requisite empirical evidence available to make the safety finding necessary to grant a full waiver from the CDL provisions. Nevertheless, the FHWA will allow States to substitute an alternate demonstration of knowledge for certain hazardous materials endorsement testing provisions, provided that drivers availing themselves of this relief obtain an otherwise valid CDL and have completed appropriate hazardous materials training that meets the standards adopted by the Research and Special Programs Administration (RSPA) at 49 CFR 172.704. Consequently, the petition is denied except to this very limited extent.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Office of Motor Carrier Standards, (202) 366–4001, or Mr. Raymond W. Cuprill or Mrs. Allison Smith, Office of the Chief Counsel, HCC–20, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Commercial Driver's License (CDL) regulations, issued pursuant to the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Title XII, Pub. L. 99–570, 100 Stat. 3207, 3207–170) (49 U.S.C. 31502), are found at 49 CFR Part 383 (1994). Section 383.23 of the regulations sets forth the general rule that no person shall operate a commercial motor vehicle (CMV) unless such person (1) has taken and passed a knowledge test and, if applicable, a driving test, which meets Federal standards, and (2) possesses a CDL, which is evidence of having passed the required tests. These Federal standards ensure that each driver of a CMV: (1) has a single driver's license and a single driving record, (2) is tested for the knowledge and skills needed to drive a vehicle representative of the vehicle that he/she will be licensed to drive, and (3) is disqualified from driving a CMV when convicted of certain criminal offenses or traffic violations. Drivers operating CMVs that haul hazardous materials requiring placarding are also required to take and pass a specialized knowledge test to obtain a hazardous materials endorsement to their licenses.

The term ''commercial motor vehicle'' is defined to include, a motor vehicle:

(1) With a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a GVWR of more than 10,000 pounds; or

(2) With a GVWR of 26,001 or more pounds; or

(3) Designed to transport 16 or more passengers, including the driver; or

(4) Used in the transportation of quantities of hazardous materials which require the vehicle to be placarded under the Hazardous Materials Transportation Regulations (49 CFR part 172, subpart F), 49 CFR 383.5 (1994).

Waivers

Section 12013 of the Commercial Motor Vehicle Safety Act of 1986 (the Act) authorizes the Secretary of Transportation to waive any class of drivers or vehicles from any or all of the provisions of the Act or the implementing regulations if the Secretary determines that the waiver is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles. The regulatory procedures governing the issuance of waivers are found at 49 CFR 383.7 (1994). The authority to issue waivers has been delegated to the FHWA at 49 CFR 1.48 (1994).

Petition

The American Pyrotechnics Association, a non-profit group representing the pyrotechnics industry, petitioned the FHWA to reconsider its previous determinations,[1] and grant a

[1] The FHWA had denied a petition for a CDL waiver filed by the American Pyrotechnics Association. *In the Matter of American Pyrotechnics Association*, Petition No. 91–03, May 3, 1991. See also, Administrator Larson's letter dated July 5, 1991, denying the American Pyrotechnics Association's request for reconsideration. Both of these documents are available for inspection and copying from the docket file MC–95–16.

CDL waiver to part-time drivers involved in fireworks displays. This petition was submitted on March 6, 1995. Petitioner asserted that the requested waiver would only be available to part-time employees who drive small vehicles containing limited quantities of fireworks over short distances within a period of seven days. All permanent fireworks employees will continue to be required to possess CDLs as part of their basic job qualifications. Moreover, all part-time employees falling within this proposed waiver would have been required to complete fireworks specific training pursuant to 49 CFR 172.704.

Petitioner argued that the waiver is necessary because the fireworks industry has faced serious problems in delivering small fireworks displays to customers located in remote areas since implementation of the CDL rule in 1992. In order to respond to thousands of requests by Fourth of July celebrants, such as small townships, the companies must rely on part-time drivers who not only drive to the display sites, but also handle and discharge the fireworks. Most such technicians work full-time at other jobs, but return each year to the fireworks industry because of their interest in fireworks displays and the opportunity to earn extra money. Petitioner claimed that these individuals would not go through the trouble and expense of obtaining a CDL, which required preparation for irrelevant endorsement examinations that cover all hazardous materials, in part because they do not receive sufficient compensation to make the effort worthwhile. Moreover, these are not professional commercial drivers transporting hazardous materials, but persons who derive their livelihood from other professions, typically school teachers, and are involved in the fireworks business for several days every year. Due to the extensive use of such seasonal employees by the fireworks industry to meet the peak demands of the Fourth of July season, Petitioner asserted that the proposed waiver would alleviate the need for those employees to obtain a CDL, while still requiring that they meet extensive Federal safety and local licensing requirements specific to the transport and handling of fireworks.

In addition, Petitioner asserted that the transportation of fireworks for displays in small communities is provided by vehicles, generally having a GVWR of less than 10,001 pounds, for which a CDL would not be required but for the hazardous nature of the cargo. The vehicles are largely pickup trucks and vans for which no special vehicle operation skills are required.

Proposed Waiver

In order to provide relief to the pyrotechnics industry, the FHWA proposed to authorize a limited waiver to be granted by States, at their discretion, from the CDL testing and licensing standards, without jeopardizing Federal funds. The proposed waiver authority would have been available to drivers 21 years of age who hold a valid operator's license, and drive solely on a part-time basis for the pyrotechnics industry. The term ''part-time driver,'' as used in the notice, referred to drivers working for the pyrotechnics industry for no more than 7 consecutive days per year (June 30 through July 6) and involved in the transportation of fireworks to be used in pyrotechnics displays. Drivers would also have been required to hold the appropriate license and approval as a pyrotechnic operator issued by State or local authority having jurisdiction in accordance with State law and to carry documentation certifying that he/she has received fireworks-specific transportation safety training pursuant to 49 CFR 172.704. A waiver would not have been available to drivers convicted of a ''serious traffic violation'' as defined in 49 CFR 383.5, in any type of motor vehicle during the preceding 12 month period.

A waiver from the CDL requirements would only have been valid for the period from June 30 through July 6; would have authorized the transportation of only 500 or less pounds of fireworks classified as DOT Class 1.3G explosives; and would have been limited to the operation of Group C vehicles (GVWR of less than 10,001 pounds), as defined in 49 CFR 383.91.

Waivers would have been granted for vehicle operation within a 300-mile radius from the driver's work reporting location. Neighboring States would have discretion to recognize such waivers provided the driver and the vehicle were operating within the 300-mile radius. The final decision on whether to implement a waiver program would have rested with the individual States.

Docket Comments

The FHWA received over 450 responses to its request for public comment. The agency received over 400 letters from part-time drivers for the pyrotechnics industry who would presumably qualify for the waiver as described in the notice of petition. These comments were in support of the agency's proposal. For the most part, these comments were form letters requiring only that the writers fill in the blanks with information regarding what State they were licensed in, how many years they had been driving for the pyrotechnics industry, and what their full-time occupation was. These letters failed to provide any specific information or data that the agency should consider when determining whether or not the proposed waiver would be contrary to the public interest or would diminish the safe operation of CMVs.

The FHWA also received 20 letters from pyrotechnic fireworks companies. These letters also were, for the most part, form letters that voiced strong support for the proposed waiver, but failed to respond to the agency's specific inquiry whether the proposed waiver would be contrary to the public interest or would diminish the safe operation of CMVs. These letters, and one from an industry association, the Pyrotechnics Guild International, reiterated the oppressiveness of the Federal regulation on their industry and the high cost to part-time drivers of obtaining a CDL, but failed to provide any empirical evidence establishing the actual safety of the proposed waiver.

The West Virginia Department of Transportation stated that the waiver would not significantly affect highway safety, noting that the vehicles covered are small trucks and vans that do not require special training to operate. However, they did express concern over the waiver of drug and alcohol testing requirements.

Commenters opposed to the waiver included nine State Departments of Transportation, Motor Vehicles, Police, the American Trucking Associations, Inc., and the National Association of Independent Insurers.

The Michigan Department of State Police, Motor Carrier Division, Hazardous Materials Section, opposed the waiver of these drivers for several reasons. They objected to the waiver from the requirements for alcohol and controlled-substances testing, and stated that the fact that these individuals were part-time drivers of hazardous materials was all the more reason to require them to meet the CDL standards. The States of Indiana and Wisconsin reiterated this comment. The Michigan Department of State Police also pointed out that the size of the vehicle is not the key issue, but rather the load that is being transported. ''Explosion from a load of fireworks is the same, from a response point of view, whether in a pick-up truck or a tractor-trailer.''

The Maryland Motor Vehicle Administration (MMVA), in its opposing comments, noted that the time

period for the waiver is usually a holiday week-end with heavier than normal week-end traffic. They also asserted that the limited time period for the waiver is potentially confusing for law enforcement, and that there is no difference in the level of danger imposed by 500 pounds of explosives during the waiver period than there is at any other time during the year. The States of Indiana, Tennessee, South Carolina, and Wisconsin had similar comments. The MMVA also noted that this is the third year that these drivers have been required to obtain CDLs with a hazardous materials endorsement, thus the industry can no longer claim surprise at the requirement. The Idaho Transportation Department, in its comments, notes that the question of compensation does not justify a waiver of the CDL requirements. Moreover, the pyrotechnics industry's assertion that its drivers must pass a hazardous materials test covering all hazardous materials, when they in fact transport only one type, could also be advanced by those drivers who solely transport fertilizer, propane, or any other single type of hazardous material. Arguably, those drivers could also demand a waiver from the CDL standards.

The American Trucking Associations, Inc. (ATA), also provided comments in opposition to the waiver. The ATA asserted that the FHWA had not met the statutory two-pronged test required before the agency can issue a waiver [49 U.S.C. 31136(e)]. Absent that finding, the ATA stated that issuing a waiver would be unlawful. The Association also found the proposed waiver irrational from a safety perspective, noting that transportation of 500 pounds of explosives within a 300-mile radius over a seven day period could add up to thousands of miles and numerous movements. Moreover, the ATA found it irrational to issue waivers to inexperienced drivers who only operate on a part-time basis. Finally, the ATA strenuously opposed the waiver of alcohol and controlled substances testing.

The National Association of Independent Insurers (NAII) opposed the proposal for similar reasons. ''Our concern is that if the petition is granted, operators who have not proven their competency, knowledge, or experience will be transporting highly hazardous incendiary materials with low flash points, on the national highway system. By petitioner's own admission, these drivers are seasonal part-timers rather than highway professionals. NAII is of the opinion that no exceptions should ever be made in the driver qualification requirements for the hauling of hazardous materials. Not only are the lives of the drivers hauling the pyrotechnics at risk, but the general public is also needlessly exposed.''

The American Pyrotechnics Association filed reply comments to the docket on June 20, 1995. Although these comments were filed after the docket closed, it is FHWA policy to give consideration to comments it can reasonably review and analyze before a decision is made. The APA took issue with the assertion that the ''freight industry'' stood ready to deliver fireworks materials, and contended that that alternative is just not practically available. The petitioners also stressed its position that the requirement to pass a largely irrelevant test placed a substantial burden in preparation time on people who were committing themselves to employment for only a few days a year for a few hundred dollars in compensation. The APA concluded that most of the part-time employees would simply opt to stay home. The APA reiterated its argument that the people engaged in the display of fireworks on the 4th of July are very safety conscious and that it was unaware of ''any transportation incidents over a twenty-year period involving fireworks in the size and type of vehicle described in this petition.''

FHWA Response to the Comments

The provisions of the CMVSA outlining the CDL regulations were specific and prescriptive. Congress, as a means to ensure the safety and qualification of drivers of commercial vehicles, not only mandated that minimum Federal testing standards be established for the operation of CMVs, but also required that each person receiving a CDL pass the written and driving test for the operation of a CMV which complies with the minimum Federal standards. Moreover, Congress expressly outlined requirements for those individuals who transport hazardous materials. Transporters of hazardous materials are required, by statute, to have a working knowledge of the hazardous materials regulations, the handling of hazardous materials, the operation of emergency equipment used in response to emergencies arising out of the transportation of hazardous material, and the appropriate response procedures to be followed in such emergencies. The intent behind these requirements was to maximize highway safety.

In addition to the enforcement of the CDL requirements, the FHWA is also charged with the statutory duty to issue a waiver from any of its requirements only if such waiver is in the public interest and consistent with the safe operation of commercial motor vehicles. If the agency cannot make a compelling finding that the statutory requirement is satisfied, it cannot lawfully issue a waiver.[2] Again, the paramount goal behind this requirement is highway safety.

The FHWA acknowledges that neither those in favor of the proposed waiver, nor those opposed, offer any meaningful scientific or other data regarding accident rates or the safety risk of transporting limited quantities of hazardous materials by these part-time drivers. Both experienced and inexperienced operators drive pickup trucks and vans every day in every location without benefit of a CDL. The nature of a cargo of fireworks has little, if any, effect on vehicle handling. Moreover, the likelihood of any explosion from properly packaged fireworks in highway collisions is minimal and was not even addressed by any of the commenters, nor was any mention offered of a single incident where the presence of fireworks in a pickup truck or van was a contributing or aggravating factor in a highway accident. The United States Court of Appeals has ruled that prior safe driving history, in and of itself, is not an adequate basis for making a waiver determination. The statutory standard, as interpreted by the Court, is that the agency may grant a waiver only after determining such an action is consistent with the safe operation of CMVs. [See *Advocates for Highway and Auto Safety* v. *FHWA*, 28 F.3d 1288, 1294 (D.C. Cir. 1994)]. Consequently, the decision of the FHWA must be the one that most reasonably fulfills that charge.

Grant of Alternate Relief

The FHWA, based upon the information presented in response to the docket comments, has concluded that some relief from certain testing requirements is justified in this instance, and therefore will allow States, at their discretion, to dispense with the requirement that part-time drivers for the pyrotechnics industry take the FHWA endorsement test for hazardous materials. In lieu of this testing requirement, States may only accept the training requirements outlined in 49 CFR 172.704, if the State believes that this training adequately prepares drivers meeting the other requirements of the waiver to deal with fireworks and the potential dangers posed by their transportation and use.

[2] See *Buck v. U.S. Department of Transportation*, U.S. Court of Appeals for the D.C. Circuit, No 94–1094, decided June 13, 1995.

These part-time drivers will remain subject to the general knowledge and skills testing required by the CDL for the class of vehicle they will be operating, as well as to alcohol and controlled substances testing. Drivers will not be limited to the 300-mile radius outlined in the proposed waiver, since they will, for all purposes, hold a valid CDL without restriction as to distance.

The FHWA has determined that this limited action is consistent with the two-pronged statutory test required for issuance of a waiver. The hazardous materials endorsement test currently administered by State licensing agencies provides no assurances that tested individuals have acquired any knowledge or skills specific to the handling of fireworks. In fact, review of samples of such tests revealed an absence of any material specific to fireworks. The FHWA believes that the training required under the RSPA regulations would provide sufficient assurances that the driver has received pertinent instruction in the requirements of the specific materials he or she is called upon to handle.

Any State opting to use this alternate method of complying with the hazardous materials endorsement requirement may issue a CDL with the following limitations clearly imprinted on its face: ''For use as a CDL only during the period from June 30 through July 6 for purposes of transporting less than 500 pounds of fireworks classified as DOT Class 1.3G explosives in a vehicle with a GVWR of less than 10,001 pounds.'' The State licensing agency may use other wording to the same effect. During the time when this limited CDL is in effect, the holder must comply with all regulations applicable to CDL holders, and will be subject to all disqualification sanctions. Operation of any vehicle transporting fireworks at any other time of the year is indicative of more than the part-time employment which provides the basis for this relief, and must be accompanied by a valid CDL for which an unrestricted hazardous materials endorsement has been issued after the administration of a required hazardous materials endorsement examination. Drivers will otherwise be required to meet all the testing and other qualifying requirements for issuance of a CDL, including the applicable drug and alcohol testing regulations, consistent with the Congressional intent behind the CMVSA. Drivers will also be required to demonstrate satisfactory completion of fireworks and/or hazardous materials specific training to ensure proper handling.

Although this action provides partial relief to part-time drivers who find much of the material covered on the hazardous materials test irrelevant to the transportation of fireworks, it continues to ensure that these drivers are familiar with the proper transportation of fireworks and hazardous materials. Because the drivers meet the requisite CDL training and an acceptable level of hazardous materials and/or fireworks specific training, this relief is not only consistent with the safe operation of commercial vehicles, but also furthers the public interest of facilitating the traditional celebration of the Nation's birthday as safely as in the past.

(Title XII of Pub. L. 99–570, 100 Stat. 3207–17–; 49 U.S.C. 31502; 49 U.S.C. 31136; 49 CFR 1.48; 49 CFR 383.7; 23 U.S.C. 315)

Issued on: June 27, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–16139 Filed 6–27–95; 3:45 pm]

BILLING CODE 4910–22–P

Proposed Rules

Federal Register
Vol. 60, No. 126
Friday, June 30, 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 TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–95–064]

RIN 2115–AA97

Safety Zone: Belmar Power Boat Race, Shark River, Belmar, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone for the Belmar Power Boat Race located in the Shark River, Belmar, New Jersey. The safety zone would be in effect on Sunday, August 20, 1995, from 11 a.m. until 5 p.m., unless extended or terminated sooner by the Captain of the Port, New York. The proposed rectangular safety zone would close the waters of the Shark River ranging from 100 to 350 yards off the northern shoreline of Maclearie Park, Belmar, New Jersey, from the Municipal Boat Basin western entrance, extending westerly approximately 750 yards.

DATES: Comments must be received on or before July 31, 1995.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Group, New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Maritime Planning Staff, Bldg. 108, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person wishing to visit the office must contact the Maritime Planning Staff at (212) 668–7934 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

FOR FURTHER INFORMATION CONTACT:

Lieutenant (Junior Grade) K. Messenger, Maritime Planning Staff Chief, Coast Guard Group New York, (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Good cause exists for publishing this Notice of proposed rulemaking (NPRM) with a 30 day comment period. A 30 day comment period is deemed to be sufficiently reasonable notice to all interested persons. Since this proposed rulemaking is neither complex nor technical, a longer comment period is deemed to be unnecessary and contrary to the public interest as it would delay publication of a final rule. Any delay in publishing a final rule would effectively cancel this event. Cancellation of this event would be contrary to public interest.

Persons submitting comments should include their names and addresses, identify this notice (CGD01–95–064) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Maritime Planning Staff at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information: The drafters of this notice are LTJG K. Messenger, Project Manager, Coast Guard Group New York, and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

The East Coast Boat Racing Club of New Jersey submitted an Application for Approval of Marine Event for a power boat race in Shark River, New Jersey. This regulation would establish a rectangular safety zone in the waters of the Shark River ranging from 100 to 350 yards off the northern shoreline of Maclearie Park, Belmar, New Jersey, from the Municipal Boat Basin western entrance, extending westerly approximately 750 yards, and bounded by the lines of latitude 40°10′48″ N and 40°10′55″ N, and the lines of longitude 074°01′58″ W and 074°02′26″ W (NAD 1983). This proposed regulation would be in effect on August 20, 1995, from 11 a.m. until 5 p.m., unless extended or terminated sooner by the Captain of the Port New York. This safety zone would prevent vessels not participating in this event from transiting this portion of the Shark River, Belmar, New Jersey. Vessels participating in this event include race participants and race committee craft. All other vessels, swimmers, and personal watercraft of any nature are precluded from entering or moving within the safety zone. This regulation is needed to protect the boating public from the hazards associated with high speed power boat racing in confined waters.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone would close a portion of the Shark River to non-participating vessel traffic on August 20, 1995, from 11 a.m. until 5 p.m., unless extended or terminated sooner by the Captain of the Port New York. Although this regulation would prevent traffic from transiting the area of the safety zone, the effect of this regulation would to be significant for several reasons: The limited duration of the event; mariners can transit around the safety zone using the channels to the north and to the south of this area; this portion of Shark River is charted as having only 2 feet of water and is only navigable by small recreational craft; and the extensive, advance advisories that will be made. Accordingly, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket. An appropriate environmental analysis of the powerboat race under the National Environmental Policy Act will be conducted in conjunction with the marine event permitting process.

List of Subjects in 33 CFR Part 165

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

Proposed Regulation

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

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

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

2. A temporary section 165.T01–064, is added to read as follows:

§ 165.T01–064 Safety Zone; Belmar Power Boat Race, Shark River, Belmar, New Jersey.

(a) *Location*. This rectangular safety zone includes all waters of the Shark River ranging from 100 to 350 yards off the northern shoreline of Maclearie Park, Belmar, New Jersey, from the Municipal Boat Basin western entrance, extending westerly approximately 750 yards, and bounded by the lines of latitude 40°10′48″N and 40°10′55″N, and the lines of longitude 074°01′58″W and 074°02′26″W (NAD 1983).

(b) *Effective period*. This section is in effect on August 20, 1995, from 11 a.m. until 5 p.m., unless extended or terminated sooner by the Captain of the Port New York.

(c) *Regulations*. (1) Vessels not participating in this event, swimmers, and personal watercraft of any nature are precluded from entering or moving within the safety zone.

(2) The general regulations contained in 33 CFR 165.23 apply.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 20, 1995.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 95–16150 Filed 6–29–95; 8:45 am]

BILLING CODE 4910–14–M

ASSASSINATION RECORDS REVIEW BOARD

36 CFR Part 1410

Rules Implementing the Freedom of Information Act

AGENCY: Assassination Records Review Board.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Assassination Records Review Board (Review Board) proposes the following set of regulations to discharge its responsibilities under the Freedom of Information Act (FOIA). The FOIA law establishes: basic procedures for public access to agency records and guidelines for waiver or reduction of fees the agency would otherwise assess for the response to the records request; categories of records that are exempt for various reasons from public disclosure; and basic requirements for federal agencies regarding their processing of and response to requests for agency records. The Review Board invites comments from interested groups and members of the public on these proposed regulations.

DATES: To be considered, comments must be mailed, delivered in person, or faxed to the address listed below by 5 p.m. on July 31, 1995.

ADDRESSES: Comments on these proposed regulations should be mailed, faxed or delivered to the Assassination Records Review Board, 600 E Street NW., 2nd Floor, Washington, D.C. 20530, fax (202) 724–0457. All comments received within the comment period will be placed in the Review Board's public files and will be available for inspection between 10 a.m. and 4:30 p.m., Monday through Friday (except on Federal holidays), in the Review Board's Public Reading Room at the same address.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, Acting General Counsel, Assassination Records Review Board, 600 E Street, NW., 2nd Floor, Washington, D.C. 20530, (202) 724–0088.

SUPPLEMENTARY INFORMATION:

Background and Statutory Authority

This proposed rule complies with the requirements of the Freedom of Information Act, 5 U.S.C. 552, as amended by the Freedom of Information Reform Act of 1986, Pub. L. 99–570, Title I, sections 1802, 1803, 100 Stat. 3207–48, 3207–49 (FOIA), to issue implementing regulations. In particular, proposed 1410.30 and 1410.35 implement the Reform Act of 1986 and the Office of Management and Budget's Uniform Freedom of Information Act Fee Schedules and Guidelines, 52 FR 10012. This proposed rule also incorporates the presidential memorandum on the administration of the Freedom of Information Act, issued on October 4, 1993, which calls upon agencies to comply with the letter and spirit of the FOIA's commitment to openness and to its proper administration.

Further, this proposed rule incorporates the presumption of openness that was a driving force behind enactment of the Review Board's enabling legislation, the *President John*

F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2701 (1992) (JFK Act). In the JFK Act, Congress prescribed the establishment of a collection of records to be known as the President John F. Kennedy Assassination Records Collection, to be housed at the National Archives and Records Administration (NARA) and currently located at NARA's facility in College Park, Maryland. Congress also mandated that the Review Board have an initial term of two years, with an option for the Review Board to extend its tenure for one additional year if its work is not completed within the initial two year period. *Id.* at Section 7(o)(1). Congress also required that ''[u]pon termination and winding up, the Review Board shall transfer all of its records to the Archivist for inclusion in the Collection, and no record of the Review Board shall be destroyed.'' *Id.* at Section 7(o)(3). Thus, while the public may file FOIA requests with the Review Board during the term of its existence, the public should also be aware of the opportunity to examine and obtain copies of the Review Board's records as a part of the JFK Records Collection at the National Archives and Records Administration.

Other key aspects of this proposed rule include the following:

(1) The Review Board would establish, consistent with 5 U.S.C. 552, two categories of Review Board records: records available through the Public Reading Room (§ 1410.15(b)) and records not available through the Public Reading Room (§ 1410.25).

(2) Procedures for requesting or examining Public Reading Room records (§ 1410.15).

(3) Procedures for filing a FOIA request (§ 1410.20)

(4) Procedures for processing FOIA requests, including prescribed response times (§ 1410.40).

(5) Procedures for administrative appeal of denials of FOIA record requests or of requests for fee waivers or reductions (§ 1410.45).

(6) Procedures for handling requests for classified information (§ 1410.50).

(7) Fee schedule for services performed in response to FOIA requests (§ 1410.35(b)(6)).

It is the Review Board's intention to implement these regulations so as to avoid any unnecessary barriers to public access to information and to ensure that the principle of openness in government is applied in each and every decision made under the FOIA. It is also the Review Board's hope that persons seeking information or records from the Review Board will consult with the Designated FOIA Officer or other Review Board staff member before invoking the procedures in the proposed regulations. To the extent permitted by law, the Review Board may make available Review Board records which it is otherwise authorized to withhold under 5 U.S.C. 552.

Paperwork Reduction Act Statement

The proposed rule is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) because it does not contain any information collection requirements within the meaning of 44 U.S.C. 3502(4).

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, the Review Board certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities and that a regulatory flexibility analysis need not be prepared. 5 U.S.C. 605(b). Whatever economic impacts may result to small entities were already considered by Congress in enacting and amending the FOIA or by OMB in Promulgating the Uniform Fee Schedules and Guidelines.

Review by OMB

This proposed regulation has been reviewed by OMB under Executive Order 12866.

List of Subjects in 36 CFR Part 1410

Freedom of Information Act.

The Proposed Regulations

Accordingly, the Review Board proposes to amend chapter XIV in title 36 of the Code of Federal Regulations by adding a new part 1410 to read as follows:

PART 1410—RULES IMPLEMENTING THE FREEDOM OF INFORMATION ACT

Sec.

1410.5 Scope.
1410.10 Definitions.
1410.15 Requests for Review Board records available through the Public Reading Room.
1410.20 Review Board records exempt from public disclosure.
1410.25 Requests for Review Board records not available through the Public Reading Room (FOIA requests).
1410.30 Requests for waiver or reduction of fees.
1410.35 Fees for Review Board record requests.
1410.40 Processing of FOIA requests.
1410.45 Procedure for appeal of denial of requests for Review Board records and denial of requests for fee waiver or reduction.
1410.50 Requests for classified agency records.

Authority: 5 U.S.C. 552; 44 U.S.C. 2107.

§ 1410.5 Scope.

This part contains the Review Board's regulations implementing the Freedom of Information Act, 5 U.S.C. 552.

§ 1410.10 Definitions.

(a) *Review Board record* is a record in the possession and control of the Review Board that is associated with Review Board business. Review Board records do not include:

(1) Publicly available books, periodicals, films, sound or video recordings, photographs, or other publications that are owned or copyrighted by nonfederal sources;

(2) Documents owned by another Federal agency that the Review Board temporarily holds for the purpose of conducting its review under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act).

(b) *Designated FOIA Officer* means the person designated by the Executive Director to administer the Review Board's activities pursuant to the regulations in this part. The Designated FOIA Officer shall also be the Review Board officer having custody of or responsible for Review Board records and shall be the Review Board's officer responsibility for authorizing or denying production of Review Board records upon request filed pursuant to § 1410.25.

(c) *Executive Director* means the principal staff official appointed by the Review Board pursuant to 44 U.S.C. 2107.8(a).

(d) *Review Board* means the Assassination Records Review Board created pursuant to 44 U.S.C. 2107.7.

§ 1410.15 Requests for Review Board records available through the Public Reading Room.

(a) A Public Reading Room will be maintained at the Review Board headquarters and will be open between 10 a.m. and 4:30 p.m., Monday through Friday, except on Federal holidays. Documents may be obtained in person from the Public Reading Room.

(b) The Public Reading Room records will include the following (if and when such records are created):

(1) The Review Board's rules and regulations;

(2) Statements of policy adopted by the Review Board;

(3) Transcripts of public hearings;

(4) Review Board orders, decisions, notices, and other formal actions;

(5) Copies of all unclassified filings, certifications, pleadings, Review Board records, briefs, orders, judgments, decrees, and mandates in court proceedings to which the Review Board is a party and the correspondence with the courts or clerks of court;

(6) Unclassified reports to Congress in which the Review Board's operations during a past fiscal year are described;

(7) Administrative staff manuals and instructions to staff to the extent that such manuals or instructions affect a member of the public; and

(8) Indices of the documents identified in this section, but not including drafts thereof.

§ 1410.20 Review Board records exempt from public disclosure.

The Review Board will make all records available for inspection and copying, except:

(a) Review Board records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and that are in fact properly classified pursuant to such Executive Order;

(b) Review Board records related solely to the internal personnel rules and practices of the Review Board;

(c) Review Board records specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute:

(1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Review Board;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record of information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual;

(h) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(i) Geological and geophysical information and data, including maps, concerning wells.

§ 1410.25 Requests for Review Board records not available through the Public Reading Room (FOIA Requests).

(a) Upon the request of any person, the Review Board shall make available for public inspection and copying any reasonably described Review Board record in the possession and control of the Review Board, but not available through the Public Reading Room, subject to the provisions of this part.

(b) A person may request access to Review Board records that are not available through the Public Reading Room by using the following procedures:

(1) The request must be in writing and must reasonably describe the Review Board records requested to enable Review Board personnel to locate them with a reasonable amount of effort. A request for all Review Board records falling within a reasonably specific and well-defined category shall be regarded as conforming to the statutory requirement that Review Board records be reasonably described. Where possible, specific information such as dates or titles that may help identify the Review Board records should be supplied by the requester, including the names and titles of Review Board personnel who may have been contacted regarding the request prior to the submission of the written request.

(2) The request should be addressed to the Designated FOIA Officer, and clearly marked ''Freedom of Information Act Request.'' The address for such requests is: Designated FOIA Officer, Assassination Records Review Board, 600 E Street, N.W., 2nd Floor, Washington, D.C. 20530. Requests must be either mailed or hand-delivered to the above address. Hand-delivered requests will be received between 8:30 a.m. and 5:00 p.m., Monday through Friday, except on Federal holidays. For purposes of calculating the time for response to the request under § 1410.40, the request shall not be deemed to have been received until it is in the possession of the Designated FOIA Officer or such other person who may be responsible for receiving such requests.

(3) The request must include:

(i) A statement by the requester of a willingness to pay the fee applicable under § 1410.35(b), or to pay that fee not to exceed a specific amount, or

(ii) A request for waiver or reduction of fees.

No request shall be deemed to have been received until the Review Board has received a statement of willingness to pay, as indicated in paragraph (b)(3)(i), of this section or has received and approved a request for waiver or reduction of fees.

(c) Requests for Review Board records containing information received from another agency, or records prepared jointly by the Review Board and other agencies, and that do not fall under category § 1410.20(a)(2) above, shall be treated as requests for Review Board records. The Designated FOIA Officer shall, however, coordinate with the appropriate official of the other agency. The notice of determination to the requester, in the event part or all of the record is recommended for denial by the other agency, shall cite the other agency Denying Officials as well as the Designated FOIA Officer if a denial by the Review Board is also involved.

(d) If a request does not reasonably describe the Review Board records sought, as provided in paragraph (b) of this section, the Review Board response shall specify the reasons why the request failed to meet those requirements and shall offer the requester the opportunity to confer with knowledgeable Review Board personnel in an attempt to restate the request. If additional information is needed from the requester to render the agency records reasonably described, any restated request submitted by the requester shall be treated as an initial request for purpose of calculating the time for response under § 1410.40.

(e) The Review Board will not be required to create new agency records, compile lists of selected items from its files, or provide a requester with statistical or other data.

(f) The Review Board staff may also respond to oral, unmarked, or generally stated requests for information and documents even though those requests do not comply with the provisions of this rule.

§ 1410.30 Request for waiver or reduction of fees.

(a) The Review Board shall collect fees for record requests made under § 1410.25 as provided in § 1410.35(b), unless the Review Board grants a written request for a waiver or reduction of fees. The Designated FOIA Officer shall make a determination on a fee waiver or reduction request within five working days of the request coming into her possession. If the determination is made that the written request for a waiver or reduction of fees does not meet the requirements of this section, the Designated FOIA Officer shall inform the requester that the request for waiver or reduction of fees is being denied and set forth the appeal rights under § 1410.45.

(b) A person requesting the Review Board to waive or reduce search, review, or duplication fees shall:

(1) Describe the purpose for which the requester intends to use the requested information;

(2) Explain the extent to which the requester will extract and analyze the substantive content of the Review Board record;

(3) Describe the nature of the specific activity or research in which the Review Board records will be used and the specific qualification the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding;

(4) Describe the likely impact of disclosure of the requested records on the public's understanding of the subject as compared to the level of understanding of the subject existing prior to disclosure;

(5) Describe the size and nature public to whose understanding a contribution will be made;

(6) Describe the intended means of dissemination to the general public;

(7) Indicate if public access to information will be provided free of charge or provided for an access or publication fee; and

(8) Describe any commercial or private interest the requester or any other party has in the Review Board records sought.

(c) The Review Board shall waive or reduce fees, without further specific information from the requester if, from information provided with the request for Review Board records made under § 1410.25, it can determine that it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(d) In making a determination regarding a request for a waiver or reduction of fees, the Review Board shall consider the following factors:

(1) Whether disclosure is likely to contribute significantly to public understanding of Government operations or activities, and

(2) Whether the requester has a commercial interest and, if so, the extent of any interests and how they would be furthered by the disclosure of the requested Review Board records.

§ 1410.35 Fees for Review Board record requests.

(a) *Fees for Review Board records available through the Public Reading Room.* Duplication fees charged shall be limited to the costs of duplication of the requested Review Board records or the cost to have them duplicated. A schedule of fees for this duplication service is set forth at paragraph (b)(6) of this section. A person may also obtain a copy of the schedule of fees in person or by mail from the Public Reading Room.

(b) *Fees for Review Board records not available through the Public Reading Room (FOIA request). (1) Definitions.* For the purpose of paragraph (b) of this section:

Commercial use request means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Review Board must determine the use to which a requester will put the documents requested. Moreover, where the Review Board has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Review Board will seek additional clarification from the Office of Management and Budget before assigning the request to a specific category.

Direct costs means those expenditures which the Review Board incurs in search, review, and duplication, to respond to requests under § 1410.25. Direct costs include, for example, the salary and benefits cost of Review Board employees applied to time spent in responding to the request and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as cost of space, and heating or lighting the facility in which the Review Board records are stored.

Educational institution refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

Noncommercial scientific institution refers to an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

Representative of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when the periodicals can qualify as disseminations of ''news'') who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. A ''freelance'' journalist may be regarded as working for a news organization if the journalist can demonstrate a solid basis for expecting publication through that organization, even though the journalist is not actually employed by the news organization. A publication contract is the best proof, but the Review Board may also look to the past publication record of a requester in making this determination.

(2) *Fees* (i) If the Review Board determines that the documents are requested for commercial use, it shall charge the average salary rate, including benefits, for Review Board employees, for document search time and for document review time, in addition to the costs of duplication as established in the schedule of fees in paragraph (b)(6) of this section.

(ii) If documents are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media, the Review Board's charges shall be limited

to the direct costs of duplication as established in the schedule of fees in paragraph (b)(6) of this section. There shall be no charge for the first 100 pages of duplication.

(iii) For a request not described in paragraphs (b)(2)(i) or (ii) of this section the Review Board shall charge the average salary rate for Review Board employees (including benefits), for document search time, and the direct costs of duplication as established in the schedule of fees in paragraph (b)(6) of this section. There shall be no charge for document review time and the first 100 pages of reproduction and the first two hours of search time will be furnished without charge.

(iv) If the Review Board is asked by a requester to send Review Board records by special methods such as express mail, it may do so, provided that the requester pays for the express delivery service.

(v) The Review Board may assess charges for time spent searching, even if it fails to locate the records, or if Review Board records located are determine to be exempt from disclosure.

(vi) Whenever the Review Board estimates that fees are likely to exceed $25, it shall notify the requester of the estimated costs, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such a notice shall offer the requester an opportunity to confer with the Review Board personnel to reformulate the request to meet the requester's needs at a lower cost.

(3) *Limitations on Fees.* The Review Board, or its designate, may establish minimum fees below which no charges will be collected, if it determines that the costs of routine collection and processing of the fees are likely to equal or exceed the amount of the fees. If total fees determined by the Review Board for a FOIA request would be less than the appropriate threshold, the Review Board shall not charge the requesters.

(4) *Payment of fees.*

(i) Payment of fees must be by check or money order made payable to the U.S. Treasury.

(ii) *Advance Payments.* (A) If the Review Board estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250, the Review Board shall notify such requester of the estimated cost and either require satisfactory assurance of full payment where the requester has a history of prompt payment of fees, or require advance payment of the charges if a requester has no payment history.

(B) If a requester has previously failed to pay a fee in a timely fashion, the Review Board shall require the requester to pay the full amount owned plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Review Board will begin to process a new request or pending request from that requester.

(C) When the Review Board requires advance payment under this paragraph, the administrative time limits prescribed in § 1410.40(b) will begin only after the Review Board has received the fee payments.

(5) *Aggregation of Requests.* Requesters may not file multiple requests, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Review Board reasonably believes that a requester, or a group of requesters acting in concert, is attempting to divide a request into a series of requests for the purpose of evading assessment of fees, the Review Board may aggregate any such requests and charge the requester accordingly. The Review Board shall not, however, aggregate multiple requests on unrelated subjects from a requester.

(6) *Fee Schedule.* Fees will be charged as provided below:

(i) *Duplication of Review Board records.* Review Board records will be duplicated at a rate of $.10 per page, provided the Review Board staff duplicates the records. If the Review Board determines that the duplication is so time-consuming that it must be sent to an outside duplication service, the requester will be charged the actual commercial rate.

(ii) *Duplication of large documents.* Large documents (e.g., maps, diagrams will be duplicated at actual commercial rates.

(iii) *Review.* Review fees shall be assessed with respect to only those requesters who seek Review Board records for a commercial use, as defined in (b)(2)(i) of this section. For each hour spent by agency personnel in reviewing a requested Review Board record for possible disclosure, the fee shall be $20.15 except that where the time of managerial personnel is required, the fee shall be $47.40 for each hour of time spent by such managerial personnel.

(iv) *Search.* For each hour spent by administrative personnel in searching for and retrieving a requested Review Board record, the fee shall be $14.75. Where a search and retrieval cannot be performed entirely by clerical personnel—for example, where the identification of Review Board records within the scope of a request requires the use of professional personnel—the fees shall be $20.15 for each hour of search time spent by such professional personnel. Where the time of managerial personnel is required, the fee shall be $47.40 for each hour of time spent by such managerial personnel.

§ 1410.40 Processing of FOIA requests.

(a) Where a request complies with § 1410.25 as to specificity and statement of willingness to pay or request for fee waiver or reduction, the Designated FOIA Officer shall acknowledge receipt of the request and commence processing of the request. The Designated FOIA Officer shall prepare a written response:

(1) Granting the request;

(2) Denying the request;

(3) Granting or denying it in part;

(4) Stating that the request has been referred to another agency under § 1410.25; or

(5) Informing the requester that responsive Review Board records cannot be located or do not exist.

(b) Action pursuant to this section to provide access to requested Review Board records shall be taken within 10 working days of receipt of a request for Review Board records, as defined in § 1410.25, except that where unusual circumstances require an extension of time before a decision on a request can be reached and the person requesting Review Board records is promptly informed in writing by the Designated FOIA Officer of the reason for such extension and the date on which a determination is expected to be made, the Designated FOIA Officer may take an extension not to exceed 10 working days.

(c) For purposes of this section and § 1410.45, the term ''unusual circumstances'' may include but is not limited to the following:

(1) The need to search, collect, and appropriately examine a voluminous amount of separate and distinct Review Board records that are demanded in a single request; or

(2) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

§ 1410.45 Procedure for appeal of denial of requests for Review Board records and denial of requests for fee waiver or reduction.

(a) (1) A person whose request for access to Review Board records or request for fee waiver or reduction is denied in whole or in part may appeal that determination to the Executive Director within 30 days of the

determination. Appeals filed pursuant to this section must be in writing, directed to the Executive Director at the address stated above, and clearly marked ''Freedom of Information Act Appeal.'' Such an appeal received by the Review Board that is not properly addressed and marked will be so addressed and marked by Review Board personnel as soon as it is properly identified and then will be forwarded to the Executive Director. Appeals taken pursuant to this paragraph will be considered to be received upon actual receipt by the Executive Director.

(2) The Executive Director shall make a determination with respect to any appeal within 20 working days after the receipt of such appeal. If, on appeal, the denial of the request for Review Board records or fee reduction is in whole or in part upheld, the Executive Director shall notify the person making such request of the provisions for judicial review of that determination.

(b) In unusual circumstances, as defined in § 1410.40(c), the time limits prescribed for deciding an appeal pursuant to this section may be extended by up to 10 working days by the Executive Director, who will send written notice to the requester setting forth the reasons for such extension and the date on which a determination or appeal is expected to be dispatched.

§ 1410.50 Requests for classified agency records.

The Review Board may at any time be in possession of classified records received from other Federal agencies. Except with respect to those documents identified in § 1410.20(a)(2), the Review Board shall refer requests under § 1410.25 for such records or information to the other agency without making an independent determination as to the releasability of such documents. The Review Board shall refer requests for classified records in a manner consistent with Executive Order 12958 of April 17, 1995, or other such law as may apply.

Dated: June 26, 1995.

David G. Marwell,

Executive Director, Assassination Records Review Board.

[FR Doc. 95–16096 Filed 6–29–95; 8:45 am]

BILLING CODE 6820–TD–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI–50–01–6739b; FRL–5219–8]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes to approve a revision to Wisconsin's State Implementation Plan (SIP) for ozone which was submitted to the USEPA on June 30, 1994, and supplemented on July 15, 1994. This revision consists of volatile organic compound (VOC) regulations which establish reasonably available control technology (RACT) for yeast manufacturing, molded wood parts or products coating, and wood door finishing. These regulations were submitted to address, in part, the requirement of section 182(b)(2)(C) of the Clean Air Act that States revise their SIPs to establish RACT regulations for major sources of VOCs for which the USEPA has not issued a control technology guidelines document. In the final rules section of this **Federal Register**, the USEPA is approving this action as a direct final rule without prior proposal because USEPA views this as a noncontroversial action 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 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 the proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before July 31, 1995.

ADDRESSES: Written comments should be mailed to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (At-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for public review during normal business hours at the above address. (It is recommended that you telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: May 31, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95–16065 Filed 6–29–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 80, 87, and 90

[WT Docket No. 92–257, FCC 95–177]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a *Further Notice of Proposed Rule Making* which seeks to provide adaptive regulations and improve radio communications capabilities in the maritime services. Specifically, the Commission has proposed rules to require a minimum digital selective calling (DSC) capability on all MF, HF, and VHF radios, permit VHF public coast stations to provide automated services to vessels and, on a secondary basis, to vehicles on land, permit inter-service sharing of maritime frequencies, permit maritime licensees to share VHF band private land mobile spectrum, permit Automatic Link Establishment (ALE) in the maritime and aviation services, permit ship-to-ship and ship-to-private coast station facsimile communications, and (eliminate certain unnecessary regulatory burdens on the boating public. This action stems from the Commission's *Notice of Proposed Rule Making and Notice of Inquiry* in PR Docket 92–257 which sought public comment regarding ways to provide a more flexible regulatory framework for the maritime services. Thus, the proposed rules should promote the use of advanced radio communications techniques on marine frequencies, eliminate unnecessary regulatory

burdens, and promote the efficient use of maritime and aviation spectrum.

DATES: Comments must be filed on or before September 22, 1995, and reply comments must be filed on or before November 21, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Roger Noel of the Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rule Making,* PR Docket No. 92–257, FCC 95–177, adopted April 26, 1995, and released, May 25, 1995. The full text of this *Further Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street, NW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street NW., Washington, DC 20037, telephone (202) 857–3800.

Summary of Notice of Proposed Rule Making

1. The Commission initiated the instant proceeding to update the maritime service rules to promote the use of new, spectrally efficient radio communications techniques. Maritime safety communication is a global issue, and thus, the Commission's maritime service rules are, in large part, based on requirements found in the International Telecommunication Union (ITU) Radio Regulations and the International Convention for the Safety of Life at Sea (Safety Convention). Therefore, the maritime services have been slow in implementing state of the art communications techniques found in most other land mobile radio services. In order to permit the implementation of such new technologies, the Commission is proposing broad changes as follows:

2. First, the Commission proposes to require a minimum digital selective calling (DSC) capability on all newly manufactured or imported MF, HF, and VHF radiotelephone transmitters by February 1, 1997. The minimum requirements would apply to newly installed transmitters after February 1, 1999. DSC is an international system for digital signalling to automatically set up marine transmissions. After February 1, 1999, all U.S. compulsory vessels (large cargo ships and passenger ships) will be required to carry DSC equipment in order to facilitate international search and rescue efforts at sea. A minimum DSC requirement would increase safety at sea by providing a means for small vessels to send distress alerts to nearby ships and coast stations.

3. Second, the Commission proposes to permit VHF public coast stations to provide automated service to vessels using any communications protocol readily available in the public domain. Further, the proposed rules would permit VHF public coast stations to serve vehicles on land, as a secondary service to maritime communications. Currently, public coast stations use a live marine operator to connect marine VHF radios and the public switched telephone network. Some public coast stations are permitted, by waiver, to serve vehicles on land. By permitting automation and expansion of coast station services, the proposed rules should increase the number of state of the art communications alternatives available to boaters while promoting competition among coast stations, cellular, and satellite communications providers.

4. Third, the Commission proposes intra-service and inter-service frequency sharing for maritime licensees. Under the intra-service sharing proposal, private coast stations could apply for unassigned public correspondence frequencies in the 2 MHz band. Similarly, the inter-service sharing proposal would permit public coast stations to apply for unassigned private land mobile frequencies in coastal areas far from Railroad Radio Service and Motor Carrier Radio Service licensees. Both sharing proposals should promote more efficient use of the radio spectrum without causing harmful interference to existing licensees.

6. Fourth, the Commission proposes to permit Automatic Link Establishment (ALE) in the 2–27.5 MHz maritime and aviation bands. These quality of communications in these bands is highly correlated to sporadic atmospheric changes and thus, experienced operators are currently needed to ensure speedy communications. ALE equipment measures the quality of all channels and quickly selects the best available medium. Further, ALE should promote the increased use of the MF and HF maritime and aviation bands by simplifying communications procedures.

7. Fifth, the Commission proposes to permit facsimile transmissions on marine VHF channel 68 (156.425 MHz) in Alaska between ships and between ships and private coast stations. Currently, only voice communications are authorized in the private marine VHF band. The proposed rules should broaden the range of communications mediums available to ships while not causing harmful interference in the marine VHF band.

8. Finally, the Commission proposes several changes to the maritime service rules in an effort to eliminate unnecessary regulatory burdens to the marine community. The proposed rules should decrease regulatory burdens for coast stations and ship station licensees.

5. Initial Regulatory Flexibility Analysis

Reason for Action

The Commission proposes to (1) allow public coast stations to install equipment which will provide automatic interconnection between marine radios and the public switched telephone network, (2) authorize intra-service sharing of certain maritime frequencies by eliminating the public/private coast station distinction in the MF band and the commercial/non-commercial distinction in the VHF maritime band, (3) permit public coast stations to serve land vehicles on a secondary basis, (4) impose a minimum Digital Selective Calling requirement on future marine radios, (5) relax restrictions on narrow-band direct printing to take advantage of advances in technology, and (6) allow maritime sharing of certain Private Land Mobile frequencies.

Objectives

We seek to (1) remove restrictions on maritime communications which have caused uneven use of marine communications channels, (2) promote efficiency and competitiveness for marine coast stations, (3) make better use of currently unused or underused portions of the spectrum, and (4) take advantage of new technologies in maritime communications.

Legal Basis

The proposed action is authorized under Sections 4(i) and 303(r) of the Communications Act, 47 U.S.C. §§ 154(i) and 303(r).

Reporting, Recordkeeping and Other Compliance Requirements

Our proposed amendment to 47 C.F.R. § 80.405(c) would provide certain licensees with an alternative method to meet a current license-posting requirement.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description, Potential Impact, and Small Entities Involved

Inter- and intra-service sharing of frequencies would allow better utilization of the radio spectrum, reduce congestion in the most crowded parts of the marine radio spectrum. Allowing automatic interconnection to the public switched telephone network and service of land vehicles from public coast stations would allow public coast stations, many of which are small businesses, to compete more efficiently in the communications marketplace. Requiring marine radios to be equipped with minimum DSC capability and relaxing narrow-band direct printing restrictions would take advantage of advances in technology to increase efficiency in spectrum use.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

None.

List of Subjects

47 CFR Part 2

Radio.

47 CFR Part 80

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 87

Communications equipment, Radio.

47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–16077 Filed 6–29–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Parts 20 and 24

[PP Docket No. 93–253, GN Docket No. 90–314, GN Docket No. 93–252, FCC 95–263]

Race- and Gender-Based Provisions for the Auctioning of C Block Broadband Personal Communications Services Licenses, Elimination

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rule making.

SUMMARY: The Commission adopts a *Further Notice of Proposed Rule Making* proposing to amend its rules to eliminate race- and gender-based provisions for the auctioning of C block broadband Personal Communications Services licenses. The Commission proposes the rule changes to prevent potential legal delays in conducting the C block auction, while minimizing disruptions to existing business relationships that were formed under the current rules.

DATES: Comments are to be filed on or before July 7, 1995. Reply comments are not requested.

ADDRESSES: Comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ramona Melson or D'wana Speight, (202) 418–0620 (Wireless Telecommunications Bureau), Kathleen O'Brien Ham, (202) 418–0660 (Wireless Telecommunications Bureau), or Peter Tenhula, (202) 418–1720 (Office of General Counsel).

SUPPLEMENTARY INFORMATION: This is the Commission's *Further Notice of Proposed Rule Making* in PP Docket No. 93–253, GN Docket No. 90–314, GN Docket No. 93–252, adopted June 23, 1995 and released June 23, 1995. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Washington, D.C. 20037.

Summary of Further Notice of Proposed Rule Making

Introduction

1. In this *Further Notice of Proposed Rule Making*, we propose measures to address legal uncertainties raised by the Supreme Court's recent decision in *Adarand Constructors, Inc.* v. *Pena*.[1] In proposing these measures, we are mindful of the Commission's obligation and commitment to ensure that the designated entities[2] are afforded opportunities to participate in the provision of spectrum-based services. We are committed to this goal. Based on the unique circumstances of the auction for licenses in the ''C block'' [3] of Personal Communications Services in the 2 GHz band (''broadband PCS''), particularly the timing of the Supreme Court's decision in *Adarand*,[4] we believe that our proposal to avoid further delay and legal uncertainty concerning the C block auction is the best means of providing opportunities for businesses owned by minorities [5] and women, many of whom have made preparations to bid in the C block auction. We emphasize, however, that our proposal is limited to the rules governing eligibility to participate in the C block auction.[6] We also emphasize that our tentative conclusion to eliminate race- and gender-based measures does not indicate that we have concluded that race- or gender-based measures are inappropriate for future spectrum auctions.

2. For purposes of the C block auction only, we propose to eliminate all race- and gender-based provisions contained in our competitive bidding rules applicable to such licenses in order to avoid delay caused by the legal challenges to our existing rules that would likely result from the Supreme Court's ruling in *Adarand*. It is our belief that such delay will significantly impede the C block auction and the expeditious dissemination of broadband PCS licenses to entrepreneurs,[7] including businesses owned by minorities and women. In addition, we propose to treat women and minorities similarly in light of the stay granted

[1] 63 U.S.L.W. 4523 (U.S. June 12, 1995).

[2] The term ''designated entities,'' as used herein refers to small business, rural telephone companies, and businesses owned by minorities or women. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103–66, Title VI, § 6002(a), 107 Stat. 312, 388 (1993) (Budget Act).

[3] The Commission allocated six broadband PCS frequency blocks for auctioning. Specifically, these are designated as the A and B blocks (consisting of 102 30 MHz Major Trading Area (MTA) licenses); the C and F blocks (consisting of 493 30 MHz Basic Trading Area (BTA) licenses and 493 10 MHz BTA licenses); and the D and E blocks (consisting of 986 10 MHz BTA licenses). The Commission recently completed its auction of the 99 A and B block licenses. *See* Public Notice, ''Announcing the Winning Bidders in the FCC's Auction of 99 Licenses to Provide Broadband PCS in Major Trading Areas; Down Payments Due March 20, 1995,'' March 13, 1995. The auctioning of the 493 C block licenses as announced in a public notice released in tandem with this *Further Notice of Proposed Rule Making* is scheduled to begin August 29, 1995. *See* Public Notice, ''FCC Sets August 29th Auction Date for 493 BTA Licenses Located in the C Block for Personal Communications Services in the 2 GHz Band, June 23, 1995.

[4] Notably, the *Adarand* decision was announced on June 12, 1995, three days before the filing deadline for short-form applications (Form 175) for the C block auctions.

[5] Under our C block competitive bidding rules, the term ''minorities'' includes Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders. *See* 47 CFR 24.720(i).

[6] Aside from the C block auction, we anticipate that parties interested in other spectrum auctions will have additional opportunities to comment at a future date.

[7] The term ''entrepreneurs,'' as used herein, refers to applicants in the C block that have gross revenues of less than $125 million in each of the last two years and total assets of less than $500 million at the time the FCC Form 175 is filed. *See* 47 CFR 24.709(a).

Telephone Electronics Corp. (TEC), which implicated both gender and minority provisions in our rules.

We are concerned that gender-based provisions could similarly result in legal challenges and delays to the C block auction. As described below, we intend to make rule changes that are the least disruptive to bidders who were in an advanced stage of planning to participate in the C block auction at the time the *Adarand* decision was handed down. We intend to make such changes swiftly, in order to minimize the effect of the modified rules on existing business relationships formed in anticipation of the C block auction.[8] Moreover, in order to facilitate swift action on our rule changes, comments are due July 7, 1995, and we are not requesting reply comments.

3. Accordingly, we tentatively conclude that our broadband PCS rules for the C block auction should be modified as follows:

- Amend § 24.709 of the Commission's Rules to make the 50.1/49.9 percent ''control group'' equity structure available to all entrepreneurs' block applicants, and not solely businesses owned by women or minorities.
- Amend § 24.720 of the Commission's Rules to eliminate the exception to the affiliation rules that excludes the gross revenues and total assets of affiliates controlled by minority investors who are members of an applicant's control group.
- Amend § 24.711 of the Commission's Rules to provide for three installment payment plans for entrepreneurs' block applicants that are based solely on financial size. In particular, the small business installment payment plan would reflect the terms previously available to minority- or women-owned small businesses.
- Amend § 24.712 of the Commission's Rules to provide for a 25 percent bidding credit for small businesses only.
- Amend § 24.204 of the Commission's Rules to make the 40 percent cellular attribution threshold applicable only to ownership interests held by small businesses and rural telephone companies, or to ownership interests held by investors in broadband PCS applicants/licensees that are small businesses.
- Amend 20.6 of the Commission's Rules to make the 40 percent attribution threshold applicable only to ownership interests held by small businesses and rural telephone companies.[9]

Background

4. In the Omnibus Budget Reconciliation Act of 1993,[10] Congress authorized the FCC to award licenses by competitive bidding for certain spectrum-based services.[11] In authorizing the use of auctions, Congress directed the Commission to ''ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women [collectively known as ''designated entities''] are given the opportunity to participate in the provision of spectrum-based services.'' [12] In response to many comments recommending how we should implement Congress's mandate and providing data explaining special problems faced by the designated entities, we adopted several rules designed to encourage the participation of designation entities, including women and minorities, in broadband PCS by addressing the difficulties these groups experience in accessing capital.[13] We determined that these special provisions for minorities and women are constitutional under the ''intermediate scrutiny'' standard of review articulated in *Metro Broadcasting, Inc.* v. *FCC*, 497 U.S. 547, 564–565 (1990).[14] In conjunction with these special provisions, we also established ''entrepreneurs' blocks'' (the C and F frequency Blocks allocated for broadband PCS) which require bidders to satisfy a financial cap to be eligible to bid on licenses in these blocks.[15]

5. On March 15, 1995, in response to a request filed by TEC alleging that our rules violated equal protection principles under the Constitution, the U.S. Court of Appeals for the District of Columbia Circuit issued an *Order* stating that ''those portions'' of the Commission's *Order* ''establishing minority and gender preferences, the C block auction employing those preferences, and the application process for that auction shall be stayed pending completion of judicial review.'' [16] The court explained that TEC had ''demonstrated the requisite likelihood of success on the merits.'' [17] The stay, however, was subsequently lifted on May 1, 1995, on TEC's motion, after TEC decided to withdraw its lawsuit.[18] On June 12, 1995, the Supreme Court decided in *Adarand* to overrule *Metro Broadcasting* ''to the extent that *Metro Broadcasting* is inconsistent with'' *Adarand's* holding that ''all racial classifications * * * must be analyzed by a reviewing court under strict scrutiny.'' [19] The Court ruled that any federal program that makes distinctions on the basis of race must serve a compelling governmental interest and must be narrowly tailored to serve that interest.[20]

6. The holding in *Adarand* potentially affects four race- or gender-based measures in our C block auction rules.[21] The purpose of these provisions was to address the lack of access to capital problem that our record showed women

[8] The Commission has received numerous letters urging it to go forward with the C block auction as expeditiously as possible. *See, e.g.*, Letter from Sandra Goeken Martis, Wireless Works, Inc., to Cathy Sandoval, Office of Communications Business Opportunities, Federal Communications Commission (FCC) (June 16, 1995); Letter from Michael Walker, Executive Director, National Paging and Personal Communications Association, to Reed Hundt, Chairman, FCC (June 16, 1995); Letter from Jonathan Chambers, Director, Public Policy, Sprint Telecommunications Venture, to Reed E. Hundt, Chairman, FCC (June 19, 1995); Letter from Roy M. Huhndorf, President, Cook Inlet Region, Inc. to Reed E. Hundt, Chairman, FCC (June 14, 1995); Letter from Eliot J. Greenwald and Howard C. Griboff, attorneys with Fisher, Wayland, Cooper, Leader & Zaragoza L.L.P, representing Central Alabama Partnership L.P. 132 and Mobile Tri-States L.P. 130, to William F. Caton, Acting Secretary, FCC (June 16, 1995).

[9] The proposed rule changes are attached as Appendix A.

[10] Budget Act, Pub. L. No. 103–66, Title VI, § 6002(b), 107 Stat. 312 (1993).

[11] Budget Act, Pub. L. 103–66, Title VI, § 6002(a), 107 Stat. at 388.

[12] 47 U.S.C. § 309(j)(4)(D).

[13] *See Fifth Report and Order*, PP Docket 93–253, 59 Fed. Reg. 37566 (July 22, 1994), 9 FCC Rcd 5532 (1994) (*Fifth R&O*), *recon. Fifth Memorandum Opinion and Order*, 59 Fed. Reg. 63210 (Dec. 7, 1994), 10 FCC Rcd 403 (1994) (*Fifth MO&O*).

[14] *See Fifth R&O*, 59 Fed. Reg. 37566 (July 22, 1994), 9 FCC Rcd 5532, 5537 at ¶9. In *Metro Broadcasting*, the Supreme Court ruled that the Commission's minority preference program for mutually exclusive applications for licenses for new radio or television broadcast stations and its distress sale program did not violate the equal protection component of the Fifth Amendment. The Court held that Congressionally mandated minority programs (even if not remedial in the sense of being designed to compensate victims of past governmental or societal discrimination) ''are constitutionally permissible to the extent that they serve important governmental objectives within the power of Congress and are substantially related to achievement of those objectives.'' *Metro Broadcasting* v. *FCC*. 497 U.S. at 565.

[15] 47 CFR § 24.709(a).

[16] *Telephone Electronics Corp*. v. *FCC*, No. 95–1015 (D.C. Cir. Mar. 15, 1995) (order granting stay).

[17] *Id* at 2.

[18] *Telephone Electronics Corp*. v. *FCC*, No. 95–1015 (D.C. Cir. May 1, 1995) (order granting dismissal of petition for review).

[19] *Adarand*, 63 U.S.L.W. at 4530.

[20] *Id* at 4533.

[21] In the *Fifth R&O*, we also adopted a tax certificate program for minority and women-owned businesses under 26 U.S.C. § 1071. 59 Fed Reg. 37566 (July 22, 1994), 9 FCC Rcd at 5580, ¶113. Congress subsequently repealed Section 1071. H.R. 831, 1045h Cong. 1st Sess. § 2. As a result of this action by Congress, we are compelled to eliminate the specific tax certificate provision in our broadband PCS rules, 47 CFR § 24.713, as indicated in Appendix A.

and minorities face.[22] The first such provision enables businesses owned by women or minorities to hold 50.1 percent of an applicant's equity while another investor holds 49.9 percent of the equity.[23] Second, under an exception to our affiliation rules, the gross revenues and total assets of firms controlled by minority investors in the applicant are not included for purposes of determining eligibility for the C block.[24] Third, small businesses and companies owned by minorities or women receive the most favorable installment payment options available to entrepreneurs' block applicants.[25] Finally, businesses owned by minorities or women and small businesses owned by minorities or women receive larger bidding credits under our rules.[26] The *Adarand* holding also potentially affects our commercial mobile radio service (CMRS) spectrum aggregation limit and cellular PCS cross-ownership rules under which ownership interests held by businesses owned by minorities and women, as well as small businesses and rural telephone companies, are subject to a higher attribution threshold.[27] In addition, under our cellular PCS Cross-ownership rule, entities that invest in broadband PCS licensees that are minority- or women-owned can benefit from a higher attribution threshold.

Overview

7. While we stress our continued commitment to the goal of ensuring broad participation in PCS by minority- and women-owned business, *Adarand* requires that we reevaluate our method for accomplishing this compelling objective. *Adarand*, which was issued just three days before applications were due for participation in the C block, imposes a strict scrutiny standard, the highest, most searching level of judicial review, for evaluating the provisions to encourage minority participation in PCS. That standard requires us to show a ''compelling governmental interest'' for taking race into account.[28] Under *Adarand* the agency must show that it considered ''race-neutral alternatives'' and that the program is ''narrowly tailored'' to meet the compelling governmental interest established by the record and findings.[29]

8. While we believe that our current record for the C block auction is strong, we tentatively conclude that additional evidence would be required to meet the strict scrutiny standard. The time required for further fact-finding would necessitate a delay in holding the C block auction. We tentatively conclude that such a delay would put the C block winners at a greater competitive disadvantage vis-a-vis existing wireless carriers such as cellular and enhanced SMR carriers, who have a substantial head start in the market.[30] Additionally, we believe there is a high likelihood that before the auction, legal challenges would be filed to question whether we have met the strict scrutiny standard. Given the D.C. Circuit's willingness to stay the auctions under an ''intermediate scrutiny standard,'' [31] there is a high likelihood that the court might impose another stay under the strict scrutiny standard of review. A stay would prevent the auction from going forward during litigation and cause lengthy delays in licensing and time to market for the eventual winners. Even if the auction were not stayed beforehand, there is a high likelihood that minority applicants and possibly female applicants who elected the bidding credits and other provisions available to members of those groups, would be subject to petitions to deny their licenses, legal challenges and possible injunctions on the issuance of their licenses. This would again greatly delay their entry into the market, and diminish their ability to compete.

9. Based on the letters we have received from potential bidders, many of whom have made extensive preparations to bid in the C block auction, we conclude that at this time, minority and women bidders, as well as other bidders, will have a better chance of becoming successful PCS providers if we eliminate the race- and gender-based provisions from the C block and adopt provisions based on economic size only. The likely delays in market entry from doing otherwise would thwart Congress's directive to disseminate PCS license quickly so competitive service to the public can begin forthwith. Because of the urgent situation posed by the need to auction these licenses in a speedy fashion so the businesses can get to market, we reluctantly conclude that we must drop the race- and gender-based provisions and adopt-standards based solely on economic size.

10. We propose to eliminate the race- and gender-based provisions in our rules in a manner that is the least disruptive to bidders preparing to bid in the C block auction. We recognize that many of the C block applicants, including minority- and women-owned businesses, as well as small businesses, have already attracted capital and formed business relationships in anticipation of the C block auction. We further understand that these relationships are more likely to survive if the auction is not significantly delayed, and our rule changes are minimally disruptive to existing business plans. We have received numerous informal comments expressing this point of view.[32] We believe, therefore, it is the best interests of furthering competition and ownership diversity in the marketplace, that we eliminate as much legal uncertainty as possible and proceed rapidly to auction the C block licenses.

11. We want to emphasize that our tentative conclusion to eliminate race- and gender-based measures from the C block auction rules does not indicate that we have concluded that race- or gender-based measures are inappropriate for any of the other spectrum auctions we will hold in the future. Moreover, we do not concede that our C block auction rules themselves are unconstitutional in the wake of *Adarand*. We simply believe that our program must now be evaluated under a stricter constitutional standard than it was before. With regard to the C block auction, we tentatively conclude that the advantages of moving forward quickly outweigh the benefits that would be derived by developing an extensive supplemental record for these rules that will pass a strict scrutiny standard of review.[33] We seek comment

[22] *See Fifth R&O*, 59 Fed. Reg. 37566 (July 22, 1994), 9 FCC Rcd at 5537–5538, 5580, ¶¶10–13, 113.

[23] 47 CFR § 24.709(b)(6).

[24] 47 CFR § 24.720(1)(11)(ii).

[25] 47 CFR § 24.711.

[26] 47 CFR § 24.712.

[27] 47 CFR §§ 20.6 and 24.204.

[28] *Adarand,* 63 U.S.L.W. at 4530.

[29] *Id*

[30] Cellular operators, for example, have been in the wireless market for over a decade, and after a very slow rise through the 1980's and into the 1990's sales have risen very quickly and cellular operators are currently enrolling about 28,000 new customers per day. *See* United States Department of Commerce, National Telecommunications and Information Administration, May 30, 1995 at 2.

[31] *Telephone Electronics Corp* v. *FCC* 95–1015 (order granting stay).

[32] *See. eg.*, Letter from Eliot J. Greenwald and Howard C. Griboff, attorneys with Fisher, Wayland, Cooper, Leader & Zaragoza L.L.P, representing Central Alabama Partnership L.P. 132 and Mobile Tri-States L.P. 130, to William F. Caton, Acting Secretary, FCC (June 16, 1995); Letter from Michael Walker, Executive Director, National Paging and Personal Communications Association, to Reed Hundt, Chairman, FCC (June 16, 1995); Letter from Sandra Goeken Martis, Wireless Works, Inc., to Cathy Sandoval, Office of Communications Business Opportunities, FCC (June 16, 1995); Letter from Jonathan Chambers, Director, Public Policy, Sprint Telecommunciations Venture, to Reed E. Hundt, Chairman, FCC (June 19, 1995); Letter from Roy M. Huhndorf, President, Cook Inlet Region, Inc. to Reed E. Hundt, Chairman, FCC (June 14, 1995).

[33] With respect to other auctions, however, we may develop a supplemental record as part of our evaluation to meet the strict scrutiny standard of *Adarand*.

on this tentative conclusion, and in particular, request information on the time needed to develop a study to support race-based measures and the scope of such a supplemental record. We conclude that our proposal to eliminate the race- and gender-based measures from the C block auction rules is consistent with our duty to implement the Budget Act.[34] We also seek comment on whether there are other ways to modify the rules to comply with the strict scrutiny standard without significantly delaying the C block auction.[35]

12. Finally, we note that nothing in the TEC stay order or the *Adarand* decision calls into question the concept of an entrepreneurs' block. The D.C. Circuit singled out ''those portions'' of the Commission's Orders ''establishing minority and gender preferences,'' not our rules designed to promote participation by small businesses.[36] Similarly, in *Adarand* the Court held that a strict scrutiny standard of review applies to preferences based on race, not size.[37] Thus, attempts to ensure that small businesses have the opportunity to compete with larger businesses are still judged under the deferential rational basis standard. Indeed, the entrepreneurs' block concept is bolstered by *Adarand* insofar as that decision requires the consideration of race-neutral measures to promote equal opportunity.[38] Our record in the competitive bidding proceeding suggests that many minority and women bidders will qualify as small businesses under our rules,[39] and, hence, be entitled to a small business bidding credit and favorable installment payment terms.[40] In any event, very few businesses owned by minorities and women are excluded from the entrepreneurs' block under our $125 million gross revenue and $500 million total asset caps.

Proposed Rule Changes

A. Control Group Equity Structures

13. *Background.* Our current rules permit broadband PCS applicants for licenses in the C block to utilize one of two equity structures so that the gross revenues and total assets of persons or entities holding non-attributable interests in such applicants will not be considered.[41] Use of either of these equity structures, however, requires applicants to form a ''control group.''[42] Under the first equity structure option, the *Control Group Minimum 25 Percent Equity Option* (which is available to all applicants), the control group must hold at least 25 percent of the applicant's total equity and members of the control group must have *de facto* control of the control group and of the applicant, and hold at least 50.1 percent of the voting stock and all general partnership interests within the control group.[43] Of that 25 percent equity, at least 15 percent must be held by ''qualifying investors.'' [44] The remaining ten percent may be held by qualifying investors, certain institutional investors, non-controlling existing investors in any preexisting entity that is a member of the control group, or individuals that are members of the applicant's management team.[45] Outside of the control group, the remaining 75 percent of the applicant's equity may be held by other non-controlling investors; but, no investor in the applicant can hold more than 25 percent of the equity and remain non-attributable.[46]

14. Under the second equity structure option, the *Control Group Minimum 50.1 Percent Equity Option* (which is currently available only to minority or women applicants), the control group must own at least 50.1 percent of the applicant's total equity, with members of the control group holding 50.1 percent of the voting stock and all general partnership interests within the control group, and having *de facto* control of both the control group and the applicant.[47] Of that 50.1 percent equity, at least 30 percent must be held by qualifying investors who are minority or women.[48] The remaining 20.1 percent may be held by qualifying investors, certain institutional investors, non-controlling existing investors in any preexisting entity that is a member of the control group, or individuals that are members of the applicant's management team.[49] Outside of the control group, the remaining 49.9 percent of the applicant's equity may be held by a single non-controlling investor who is considered non-attributable.[50]

15. *Discussion.* We propose to modify our rules to permit all C block applicants to avail themselves of the 50.1/49.9 percent equity structure. When we adopted the *Control Group Minimum 50.1 Percent Equity Option* in the *Fifth R&O,* we determined that making such a mechanism available to minority- or women-owned businesses would better enable them to attract adequate financing. We have previously noted that the primary impediment to participation by businesses owned by women and minorities in broadband PCS is a lack of access to capital.[51] In light of the Supreme Court's holding in *Adarand,* however, we proposed to make the *Control Group Minimum 50.1 Percent Equity Option* available to small businesses [52] and entrepreneurs rather than limiting it to minority- of women-owned businesses. We tentatively conclude that this proposed rule change would cause the least disruption to existing business relationships formed in anticipation of the C block auction that were premised on the use of this particular equity structure. Our

[34] *See, e.g, Second Report and Order* and *Second Further Notice of Proposed Rule Making,* PR Docket No. 89–553, 60 Fed. Reg. 21987 (1995) (*900 MHz SMR Second R&O/Second FNPRM*).

[35] *See eg.,* Letter from Thomas A. Hart, Jr. National Paging and Personal Communications Assoc., et. al. to William E. Kennard, General Counsel, FCC (June 22, 1995); Letter from David Honig, Executive Director, Minority Media and Telecommunications Council to William E. Kennard, General Counsel, FCC (June 21, 1995); Letter from James L. Winston, Executive Director and General Counsel, National Association of Black Owned Broadcasters, and Lois E. Wright, Vice President and Corporate Counsel Inner City Broadcasting Corp., to Reed E. Hundt, Chairman, FCC (June 15, 1995).

[36] *Telephone Electronics Corp. v. FCC,* No. 95–1015 (order granting stay).

[37] *Adarand,* 63 U.S.L.W. at 4526.

[38] *See Adarand, Id.* at 4533, quoting *Croson,* 488 U.S. at 507 (under strict scrutiny, courts ask ''whether there was any consideration of the use of race-neutral means to increase minority business participation.'')

[39] *See, e.g., 900 MHz SMR Second R&O/Second FNPRM,* 60 Fed. Reg. 21987 (indicating that ''U.S. Census Data shows that approximately 99% of all women-owned businesses and 99% of all minority-owned businesses generated net receipts of $1 million or less'', citing *Women-Owned Business,* WB 87–1, 1987 Economic Census, p. 144, Table 8; *Survey of Minority-Owned Business Enterprises,* MB 87–4, 1987 Economic Census, pp. 81–82, Table 8).

[40] 47 CFR §§ 24.712 and 24.711.

[41] *See* 47 CFR § 24.709(b)(5) and (b)(6).

[42] Under the control group mechanism, the gross revenues and total assets of certain investors are not attributed provided the applicant has a control group consisting of one or more individuals or entities that are in *de jure* and *de facto* control of the applicant. The gross revenues and total assets of each member of the control group are counted toward the financial caps applicable to the entrepreneurs' block licenses. *See* 47 CFR § 24.720(k).

[43] 47 CFR § 24.709(b)(5)(i).

[44] Id. Under our rules, ''qualifying investors'' are defined as members of or holders of an interest in members of the applicant's or licensee's control group who gross revenues and total assets, when aggregated with those of all other attributable investors and affiliates, do not exceed the gross revenues and total assets restrictions specified in our rules with regard to eligibility for entrepreneurs' block licenses. 47 CFR § 24.720(n)(1).

[45] 47 CFR § 24.709(b)(5)(i)(C).

[46] 47 CFR § 24.709(b)(3).

[47] 47 CFR § 24.709(b)(6)(i).

[48] 47 CFR § 24.709(b)(6)(i)(A).

[49] 47 CFR § 24.709(b)(6)(i)(C).

[50] 47 CFR § 24.709(b)(4).

[51] *Fifth R&O,* 59 Fed. Reg. 37566 (July 22, 1994), 9 FCC Rcd at 5537, ¶ 10.

[52] Under our rules, a ''small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average gross revenues that are not more than $40 million for the preceding three years. 47 CFR § 24.720(b)(1).

proposed rule change enables minority- or women-owned businesses to retain their 50.1/49.9 percent equity structures while extending this control group option to other applicants in the entrepreneurs' block as well. We also expect that this proposed rule change would mitigate the likely legal challenges that could result if we moved forward with this rule in its current form. Consequently, the proposed rule change would facilitate the expeditious dissemination of the licenses. We seek comment on this proposed rule change and on our tentative conclusions.

16. We also recognize that, as a result of the proposed rule change, all C block applicants would be able to take advantage of the 50.1/49.9 percent equity structure, including small businesses and entrepreneurs. Nevertheless, we view this as the best approach to preserve many of the existing business relationships that have been formed, including those of women and minorities. We think this approach would be the least disruptive and would allow many minority or women applicants—both entrepreneurs and small businesses—to proceed. We seek comment on this analysis.

17. Although we propose to eliminate the race- and gender-based measures currently provided in our rules for the C block licenses, we, nonetheless, intend to continue to request bidder information on the short-form filings as to minority- or women-owned status. We tentatively conclude that such information will assist us in analyzing the applicant pool and the auction results to determine whether we have accomplished substantial participation by minorities and women through the broad provisions available to small businesses as directed by Congress. This information will assist us in preparing our report to Congress on the participation of designated entities in the auctions and in the provision of spectrum-based services.[53] In addition, such information will be relevant in developing a supplemental record should we find that special provisions solely for small businesses prove unsuccessful in encouraging dissemination of licenses to a wide variety of applicants, including businesses owned by members of minority groups and women. In this regard, we retain discretion to tailor our approach for future auctions. We seek comment on this monitoring proposal.

B. Affiliation Rules

18. *Background.* In the *Fifth R&O,* we adopted specific affiliation rules for identifying all individuals and entities whose gross revenues and assets must be aggregated with those of the applicant in determining whether the applicant exceeds the financial caps for the entrepreneurs' blocks or for small business size status.[54] Our affiliation rules identify which individuals or entities will be found to control or be controlled by the applicant or an attributable investor in the applicant by specifying which ownership interests or other criteria will give rise to a finding of control and consequent affiliation. We have adopted two narrowly tailored exceptions to our affiliation rules in the broadband PCS context. Under one exception, applicants affiliated with Indian tribes and Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.,* are generally exempted from the affiliation rules for purposes of determining eligibility to participate in bidding on C block licenses and to qualify as a small business with a rebuttable presumption that revenues derived from gaming, pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.* will be included in the applicants eligibility determination.[55] Under the second exception, the gross revenues and assets of affiliates controlled by minority investors who are members of the applicant's control group are not attributed to the applicant for purposes of determining compliance with the eligibility standards for entry into the entrepreneurs' block.[56]

19. *Discussion.* We propose to eliminate the exception to our affiliation rules pertaining to minority investors. In crafting this exception, we anticipated that it would permit minority investors who control other concerns to be members of an applicant's control group and to bring their management skills and financial resources to bear in its operation without the assets and revenues of those other concerns being counted as part of the applicant's total assets and revenues.[57] We further anticipated that such an exception would permit minority applicants to pool their resources with other minority-owned businesses and draw on the expertise of those who have faced similar barriers to raising capital in the past.[58] Consequently, we tentatively conclude that it would be imprudent to extend such exception to all entrepreneurs because to do so would frustrate the Commission's goals in establishing the entrepreneurs' block—namely, to ensure that broadband PCS will be disseminated among a wide variety of applicants and to exclude many large telecommunications companies from bidding on such blocks.[59]

20. Although this proposed rule change may significantly affect certain existing business relationships formed in anticipation of the C block auction, we must balance our concern about minimizing the adverse impact on a limited number of existing business relationships with our desire to mitigate the legal challenges that are likely to result from the Court's *Adarand* decision in the absence of such rule change. In this context, we tentatively conclude that such rule change will affect a limited number of existing business relationships. By contrast, without such rule change, award of all entrepreneurs' block licenses could potentially be subject to substantial delay as a result of legal challenges to this race-based exception to the affiliation rules (regardless of the fact that such exception is limited in scope). We tentatively conclude that such outcome would be inconsistent with both the spirit and mandate of the Budget Act.[60] We also tentatively conclude that the proposed rule change not only complies with the Budget Act but also benefits the general public, since it would facilitate rapid deployment of broadband PCS in a manner most likely to avoid judicial delay. We seek comment on this proposed rule change and these tentative conclusions. We also do not propose to eliminate the affiliation exception for Indian tribes and Alaska Regional or Village Corporations. We tentatively conclude that the ''Indian Commerce Clause'' of the United States Constitution provides an independent basis for this exception that is not questioned by the *Adarand* decision.[61]

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[53] *See* 47 U.S.C. § 309(j)(12)(D).

[54] *Fifth R&O,* Fed. Reg. 37566 (July 22, 1994), 9 FCC Rcd at 5620, 5625.

[55] 47 CFR § 24.720(l)(11)(i).

[56] 47 CFR § 24.720(l)(11)(ii).

[57] *Fifth MO&O,* 59 Fed. Reg. 63210(Dec. 7, 1994), 10 FCC Rcd at 425–426, ¶ 41.

[58] *Id.*

[59] *See Fifth R&O,* 59 Fed. Reg. 37566 (July 22, 1994), 9 FCC Rcd at 5538, ¶ 12.

[60] The Budget Act instructs the Commission to provide for the ''rapid deployment of new technologies * * * without administrative or judicial delays.'' 47 U.S.C. 309(j)(3)(A).

[61] *Order on Reconsideration,* 59 Fed. Reg. 43062 (Aug. 22, 1994), FCC 94–217, (released Aug. 15, 1994); *Fifth MO&O,* 59 Fed. Reg. 63210 (Dec. 7, 1994), 9 FCC Rcd at 5548–4449, ¶¶ 42–43. *See also Oklahoma Tax Commission* v. *Chickasaw Nation,* 63 U.S.L.W. 4594, 4596 (Supreme Court upheld applicability of a categorical immunity from certain State taxation to Indian tribes and their members and not to ''non-Indians.'')

C. Installment Payments

21. *Background.* Entrepreneurs' block licensees are eligible for installment payment plans that afford them the opportunity to pay for their licenses over a period of time, and under certain financial terms. Five different installment payment plans are currently available to C block applicants under § 24.711 of the Commission's Rules.[62] The first installment payment plan is available to applicants with gross revenues in excess of $75 million. This plan provides for the payment of interest based on the 10-year U.S. Treasury rate, plus 3.5 percent with payment of principal and interest amortized over the term of license.[63]

22. The second installment payment plan is available to those applicants with gross revenues between $40 and $75 million.[64] This plan provides for the payment of interest equal to the 10-year U.S. Treasury rate plus 2.5 percent. The applicants eligible for this plan may pay interest only for one year with the principal and interest amortized over the remaining nine years of the license term. The third installment payment plan is available only to applicants that qualify as a small business or consortium of small businesses.[65] This plan provides for the payment of interest at the rate of the 10-year U.S. Treasury rate plus 2.5 percent; however, the applicants eligible for this plan may pay interest only for two years with principal and interest amortized over the remaining eight years of the license term.

23. The remaining installment payment plans for available only to minorities or women. Specifically, the fourth plan provides interest-only payments for three years and payments of principal and interest over the remaining seven years of the license term and is only available to businesses owned by members of minority groups or women. The final and most favorable installment payment plan provides interest-only payments for six years and payments of principal and interest amortized over the remaining four years of the license term. This plan is only available to small businesses owned by members of minority groups or women. Previously, the Commission has determined that there is a basis for differentiating installment plans by size.[66]

24. *Discussion.* We propose to modify this rule to eliminate the special provisions that are tied to an applicant's status as a minority- or women-owned business, and to provide for three installment payment plans that are based solely on financial size. In this regard, we propose to modify only installment payment plans available to small businesses with gross revenues under $40 million.[67] We propose to extend the most favorable installment payment plan previously available only to small minority- or women-owned firms to all small businesses. Thus, we propose that all small businesses be permitted to pay for their licenses in installments at the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted and that payments include interest only for the first six years with payments of principal and interest amortized over the remaining four years of the license term. In effect, we are proposing the deletion of our current § 24.711(b)(3) and (4) and the renumbering of § 24.711(b)(5) as § 24.711(b)(3) after the modification.

25. This rule change will grant small businesses the same installment plan available now to minority- or women-owned small business. We believe this approach will prove to be the least disruptive to the existing agreements between prospective bidders and the financial community and will provide the most favorable plan to the smallest companies. We seek comment on this proposal which will enable all small business applicants to benefit from the most favorable installment payment plan that was previously only available to minority-or women-owned small businesses.

D. Bidding Credits

26. *Background.* Our current rules provide for three tiers of bidding credits ranging between 10 percent and 25 percent. The bidding credit acts as a discount on the winning bid amount that a license actually has to pay for the license. A small business is granted a 10 percent bidding credit. A business that is owned by members of minority groups or women is granted a 15 percent bidding credit. A small business owned by members of minority groups or women is allowed to aggregate the bidding credits for a 25 percent bidding credit.

27. *Discussion.* We propose to increase the bidding credit for small business from 10 percent to 25 percent. We further propose to eliminate the remaining bidding credits. This rule change eliminates the race- and gender-based bidding credits and extends the 25 percent bidding credit to all small businesses. We seek comment on this proposal. At the same time, this proposal will enhance the competitiveness of all small businesses which will receive an increase of 15 percent in their bidding credits. The positions of minority- or women-owned small businesses will remain the same because they will be eligible for a 25 percent bidding credit. Consequently, this proposal should be the least disruptive to the current business arrangements and financial agreements.

28. This proposal will allow the Commission and prospective bidders to avoid litigation, allow the auction to proceed as close to its original schedule as possible and permit prospective bidders to maintain previously negotiated business arrangements and financial agreements. Thus, we recommend amending § 24.712(a) to raise the bidding credit from 10 percent to 25 percent. We further recommend deleting § 24.712 (b) and (c) and re-numbering § 24.712(d) as § 24.712(b). We seek comment on this outcome.

E. Cellular PCS Cross-Ownership and CMRS Spectrum Aggregation Limit

29. *Background.* Our cellular PCS cross-ownership rule currently provides for a higher cellular ownership attribution threshold for small businesses, rural telephone companies and businesses owned by minorities or women than for other entities.[68] Generally, our rules provide that partnership and other ownership interests, and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a cellular licensee shall be attributable for purposes of the cellular PCS cross-ownership restrictions.[69] If cellular ownership interests are held by small businesses, rural telephone companies or businesses owned by minorities or women, however, such interests are only attributable at the 40 percent or more level. In addition, cellular ownership interests held by entities with non-controlling interests in a broadband PCS applicant licensee are subject to a 40 percent attribution threshold for purposes of § 24.204. Similarly, our CMRS spectrum

[62] 47 CFR § 24.711.

[63] 47 CFR § 24.711(b)(1).

[64] 47 CFR § 711(b)(2).

[65] 47 CFR § 24.711(b)(3).

[66] *See Fifth R&O,* 59 Fed. Reg. 37566 (July 22, 1994), 9 FCC Rcd at 5593, ¶¶139–140; *Fifth MO&O,* 59 Fed. Reg. 63210 (Dec. 7, 1994), 10FCC Rcd at 458, ¶101.

[67] The first and second payment plans for eligible bidders with gross revenues exceeding $75 million and with gross revenues between $40 and $75 million will remain the same. 47 CFR § 24.711(b)(1) and (2).

[68] 47 CFR 24.204(d)(2)(ii).

[69] *Id.*

aggregation limit provides that partnership and other ownership interests, and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a cellular licensee shall be attributable for purposes of the cellular PCS cross-ownership restrictions, except that those interests held by small businesses, rural telephone companies or businesses owned by minorities or women, are only attributable at the 40 percent or more level.[70]

30. *Discussion*. We propose to modify the cellular PCS cross-ownership and CMRS spectrum aggregation limit rules to remove the provisions which increase the cellular attribution threshold to 40 percent on the basis of the race or gender of the holder of the ownership interest or of the broadband PCS applicant in which such holder is an investor. Accordingly, we propose to modify § 24.204(d)(2)(ii) of our rules to provide that the 40 percent cellular attribution threshold will continue to apply if the ownership interest is held by a small business or a rural telephone company or if the ownership interest is held by an entity with a non-controlling equity interest in a broadband PCS licensee or applicant that is a small business. Similarly, we propose to modify § 20.6(d)(2) of our rules to provide that the 40 percent cellular attribution threshold will continue to apply if the ownership interest is held by a small business or a rural telephone company (including those owned by minorities or women). Although this change could result in a lower cellular attribution threshold for businesses owned by minorities and women as well as for non-controlling investors in broadband PCS applicants or licensees that are owned by minorities or women (with respect to our cellular PCS cross-ownership rule), we believe that this modification is necessary to ensure that our rules are insulated from legal challenge. Moreover, the proposed rule change to our cellular PCS cross-ownership rule may result in additional investment in broadband PCS applicants that are small businesses, because this rule change would extend the 40 percent cellular attribution threshold to such investors in broadband PCS applicants that are small businesses. We seek comment on this proposal. In addition, we recognize that both the cellular PCS cross-ownership rule and the CMRS spectrum aggregation limit apply to more than just the C block. We propose to limit our specific rule changes to affect only the C block.

[70] 47 CFR § 20.6(d)(2).

Procedural Matters

A. Regulatory Flexibility Act

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this *Further Notice of Proposed Rule Making.* Written public comments are requested on the IRFA. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the comment deadlines provided above.

1. Reason for Action: This rule making proceeding was initiated to secure comment on proposals to eliminate all race- and gender-based provisions in our competitive bidding rules for our C block auction only. The proposals advanced in the *Further Notice of Proposed Rule Making* are also designed to implement Congress's goal of giving small businesses, rural telephone companies, and businesses owned by members of minority groups and women the opportunity to participate in the provision of spectrum-based services in accordance with 47 U.S.C. 309(j)(4)(D).

2. Objectives: The Commission proposes changes to its rules for the C block that are intended to be the least disruptive to bidders who were in an advanced stage of planning to participate in the C block auction. Specifically, the Commission seeks to ensure competition and ownership diversity by avoiding a lengthy delay in the conduct of the auction caused by probable legal challenges to our rules. The Commission proposes to amend its rules to offer favorable bidding credits and installment payment terms to small businesses. The Commission also proposes to permit all C block applicants to avail themselves of the 50.1/49.9 percent equity structure. The Commission also proposes to eliminate the minority investor exception to the affiliation rules. Finally, the Commission proposes to make revisions to the PCS-cellular crossownership rule and the Commercial Mobile Radio Services (CMRS) spectrum cap for purposes of the C block auction only.

3. Legal Basis: The proposed action is authorized under Sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, 47 U.S.C. 154(i), 303(r) and 309(j), as amended.

4. Reporting, Recordkeeping, and Other Compliance Requirements: The proposals under consideration in this *Further Notice of Proposed Rule Making* do not include the possibility of new reporting and recordkeeping requirements for small business entities.

5. Federal Rules Which Overlap, Duplicate or Conflict With These Rules: None.

6. Description, Potential Impact, and Number of Small Entities Involved: The rule changes proposed in this proceeding will affect all small businesses regardless of whether each small business avails itself of the favorable rule changes.

7. Any Significant Alternative Minimizing the Impact on Small Entities Consistent with the Stated Objectives: This *Further Notice of Proposed Rule Making* proposes certain mechanisms of preferential treatment for small businesses, among other entities, to ensure economic opportunity, such as favorable financing and bidding credits.

B. Paperwork Reduction Act

The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, as amended, and found to impose no new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act of 1980, as amended.

C. Ex Parte Rules—Non-Restricted Proceeding

This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

D. Ordering Clause

Authority for issuance of this *Further Notice of Proposed Rule Making* is contained in sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 309(j).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

List of Subjects

47 CFR Part 20

Commercial mobile radio services

47 CFR Part 24

Personal communications services

Proposed Rules

Parts 20 and 24 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 3053 and 332, unless otherwise noted.

2. Section 20.6 is amended by revising paragraph (d)(2) to read as follows:

§ 20.6 CMRS spectrum aggregation limit.

* * * * *

(d) * * *

(2) Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a cellular licensee will be attributable, except that ownership will not be attributed unless the partnership and other ownership interests and any stock interest amount to 40 percent or more of the equity, or outstanding stock, or outstanding voting stock of a cellular licensee if the ownership interest is held by a small business or a rural telephone company, as these terms are defined in § 1.2110 of this chapter or other provisions of the Commission's rules.

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PART 24—PERSONAL COMMUNICATIONS SERVICES

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

Authority: Secs. 4, 301, 302, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Section 24.204 is amended by revising paragraph (d)(2)(ii) to read as follows:

§ 24.204 Cellular eligibility.

* * * * *

(d) * * *

(2) * * *

(ii) Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a cellular licensee will be attributable, except that ownership will not be attributed unless the partnership and other ownership interests and any stock interest amount to 40 percent or more of the equity, or outstanding stock, or outstanding voting stock of a cellular licensee if the ownership interest is held by a small business or a rural telephone company, as these terms are defined in § 1.2110 of this chapter, or if the ownership interest is held by an entity with a non-controlling equity interest in a broadband PCS licensee or applicant that is a small business as defined in § 24.720.

* * * * *

3. Section 24.709 is amended by revising the heading and paragraphs (a), (b)(6), (c)(1) introductory text, (c)(1)(ii)(B), (c)(2) introductory text, (c)(2)(ii) and (e) to read as follows:

§ 24.709 Eligibility for licenses for frequency Block C.

(a) *General Rule.* (1) No application is acceptable for filing and no license shall be granted for frequency block C, unless the applicant, together with its *affiliates* and persons or entities that hold interests in the applicant and their *affiliates*, have *gross revenues* of less than $125 million in each of the last two years and *total assets* of less than $500 million at the time the applicant's short-form application (Form 175) is filed.

(2) The *gross revenues* and *total assets* of the applicant (or licensee), and its *affiliates*, and (except as provided in paragraph (b) of this section) of persons or entities that hold interests in the applicant (or licensee), and their *affiliates*, shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for a licensee for frequency block C under this section.

(3) Any licensee awarded a license pursuant to this section (or pursuant to § 24.839(d)(2)) shall maintain its eligibility until at least five years from the date of initial license grant, except that a licensee's (or other attributable entity's) increased *gross revenues* or increased *total assets* due to *nonattributable equity* investments (i.e., from sources whose *gross revenues* and *total assets* are not considered under paragraph (b) of this section), debt financing, revenue from operations or other investments, business development or expanded service shall not be considered.

(b) * * *

(6) *Control Group Minimum 50.1 Percent Equity Requirement.* In order to be eligible to exclude *gross revenues* and *total assets* of persons or entities identified in paragraph (b)(4) of this section, an applicant (or licensee) must comply with the following requirements:

(i) Except for an applicant (or licensee) whose sole control group member is a *preexisting entity*, as provided in paragraph (b)(6)(ii) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) *control group* must own at least 50.1 percent of the applicant's (or licensee's) total equity as follows:

(A) At least 30 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors*, either unconditionally or in the form of options, exercisable at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(B) Such *qualifying investors* must hold 50.1 percent of the voting stock and all general partnership interests within the control group and must have *de facto* control of the control group and of the applicant;

(C) The remaining 20.1 percent of the applicant's (or licensee's) total equity may be owned by *qualifying investors*, either unconditionally or in the form of stock options not subject to the restrictions of paragraph (b)(6)(i)(A) of this section, or by any of the following entities which may not comply with § 24.720(n)(1):

(1) Institutional investors, either unconditionally or in the form of stock options;

(2) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group*, either unconditionally or in the form of stock options; or

(3) Individuals that are members of the applicant's (or licensee's) management, either unconditionally or in the form of stock options.

(D) Following termination of the three-year period specified in paragraph (b)(6)(i) of this section, *qualifying investors* must continue to own at least 20 percent of the applicant's (or licensee's) total equity, either unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(6)(i)(A) of this section. The restrictions specified in paragraph (b)(6)(i)(C)*(1)* through (*3*) of this section no longer apply to the remaining equity after termination of such three-year period.

(ii) At the election of an applicant (or licensee) whose *control group's* sole member is a *preexisting entity*, the 50.1 percent minimum equity requirements set forth in paragraph (b)(6)(i) of this section shall apply, except that only 20 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors*, and that the remaining 30.1 percent of the applicant's (or licensee's) total equity may be held by *qualifying*

investors, or noncontrolling *existing investors* in such *control group* member or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 30.1 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(96)(i) of this section.

* * * * *

(c) * * *

(1) *Short-form Application.* In addition to certifications and disclosures required by Part 1, subpart Q of this Chapter and § 24.813, each applicant for a license for frequency Block C shall certify on its short-form application (Form 175) that it is eligible to bid on and obtain such license(s), and (if applicable) that it is eligible for designated entity status pursuant to this section and § 24.720, and shall append the following information as an exhibit to its Form 175:

* * * * *

(ii) * * *

(B) The citizenship and the gender or minority group classification for each member of the applicant's *control group* if the applicant is a *business owned by members of minority groups and/or women;*

* * * * *

(2) *Long-form Application.* In addition to the requirements in subpart I of this part and other applicable rules (e.g., §§ 24.204(f), 20.6(e), and 20.9(b)), each applicant submitting a long-form application for a license(s) for frequency block C shall, in an exhibit to its long-form application:

* * * * *

(ii) List and summarize all agreements or other instruments (with appropriate reference to specific provisions in the text of such agreements and instruments) that support the applicants's eligibility for a license(s) for frequency Block C and its eligibility under §§ 24.711, 24.712 and 24.720, including the establishment of *de facto* and *de jure* control; such agreements and instruments include articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, partnership agreements, management agreements, joint marketing agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written; and

* * * * *

(e) *Definitions.* The terms *affiliate, business owned by members of minority groups and women, consortium of small businesses, control group, existing investor, gross revenues, institutional investor, members of minority groups, nonattributable equity, preexisting equity, publicly traded corporation with widely dispersed voting power, qualifying investor, small business and total assets* used in this section are defined in § 24.720.

4. Section 24.711 is amended by revising the section heading and the heading of paragraph (a), and paragraphs (a)(1), (b) introductory text and (b)(3) to read as follows:

§ 24.711 Upfront payments, down payments and installment payments for licenses for frequency Block C.

(a) *Upfront Payments and Down Payments.* (1) Each eligible bidder for licenses on frequency Block C subject to auction shall pay an upfront payment of $0.015 per MHz per pop for the maximum number of licenses (in terms of MHz-pops) on which it intends to bid pursuant to § 1.2106 of this chapter and procedures specified by Public Notice.

* * * * *

(b) *Installment Payments.* Each eligible licensee of frequency Block C may pay the remaining 90 percent of the net auction price for the license in installment payments pursuant to § 1.2110(e) of this Chapter and under the following terms:

* * * * *

(3) For an eligible licensee that qualifies as a small business or as a consortium of small businesses, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first six years and payments of interest and principal amortized over the remaining four years of the license term.

(c) *Unjust Enrichment.*

* * * * *

5. Section 24.712 is amended by revising the section heading and paragraph (a), removing paragraphs (b) and (c), and redesignating paragraph (d) as paragraph (b) to read as follows:

§ 24.712 Bidding credits for licenses for frequency Block C.

(a) A wining bidder that qualifies as a small business or a consortium of small businesses may use a bidding credit of twenty-five percent to lower the cost of its winning bid.

* * * * *

§ 24.713 [Removed and reserved]

6. Section 24.713 is removed and reserved.

7. A new § 24.715 is added to Subpart H to read as follows:

§ 24.715 Eligibility for licenses for frequency Block F.

(a) *General Rule.*

(1) No application is acceptable for filing and no license shall be granted for frequency block F, unless the applicant, together with its *affiliates* and persons or entities that hold interests in the applicant and their *affiliates,* have *gross revenues* of less than $125 million in each of the last two years and *total assets* of less than $500 million at the time the applicant's short-form application (Form 175) is filed.

(2) The *gross revenues* and *total assets* of the applicant (or licensee), and its *affiliates,* and (except as provided in paragraph (b) of this section) of persons or entities that hold interests in the applicant (or licensee), and their *affiliates,* shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for a license for frequency block F under this section.

(3) Any licensee awarded a license pursuant to this section (or pursuant to § 24.839(d)(2)) shall maintain its eligibility until at least five years from the date of initial license grant, except that a licensee's (or other attributable entity's) increased *gross revenues* or increased *total assets* due to *nonattributable equity* investments (i.e., from sources whose *gross revenues,* and *total assets* are not considered under paragraph (b) of this section), debt financing, revenue from operations or other investments, business development or expanded service shall not be considered.

(b) *Exceptions to General Rule*—(1) *Small Business Consortia.* Where an applicant (or licensee) is a *consortium of small businesses,* the *gross revenues* and *total assets* of each small business shall not be aggregated.

(2) *Publicly-Traded Corporations.* Where an applicant (or licensee) is a *publicly traded corporation with widely dispersed voting power,* the *gross revenues* and *total assets* of a person or entity that holds an interests in the applicant (or licensee), and its *affiliates,* shall not be considered.

(3) *25 Percent Equity Exception.* The *gross revenues* and *total assets* of a person or entity that holds an interest in the applicant (or licensee), and its *affiliates,* shall not be considered so long as:

(i) Such person or entity, together with its *affiliates,* holds only *nonattributable equity* equaling no more than 25 percent of the applicant's (or licensee's) total equity;

(ii) Except as provided in paragraph (b)(5) of this section, such person or entity is not a member of the applicant's (or licensee's) *control group;* and

(iii) The applicant (or licensee) has a *control group* that complies with the minimum equity requirements of paragraph (b)(5) of this section, and, if the applicant (or licensee) is a corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(4) *49.9 Percent Equity Exception.* The *gross revenues* and *total assets* of a person or entity that holds an interest in the applicant (or licensee), and its *affiliates,* shall not be considered so long as:

(i) Such person or entity, together with its *affiliates,* holds only *nonattributable equity* equalling no more than 49.9 percent of the applicant's (or licensee's) total equity;

(ii) Except as provided in paragraph (b)(6) of this section, such person or entity is not a member of the applicant's (or licensee's) *control group;* and

(iii) The applicant (or licensee) has a *control group* that complies with the minimum equity requirements of paragraph (b)(6) of this section and, if the applicant (or licensee) is a corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(5) *Control Group Minimum 25 Percent Equity Requirement.* In order to be eligible to exclude *gross revenues* and *total assets* of persons or entities identified in paragraph (b)(3) of this section, an applicant (or licensee) must comply with the following requirements:

(i) Except for an applicant (or licensee) whose sole control group member is a *preexisting entity,* as provided in paragraph (b)(5)(ii) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) *control group* must own at least 25 percent of the applicant's (or licensee's) total equity as follows:

(A) At least 15 percent of the applicant's (or licensee's) total equity must be held by qualifying investors, either unconditionally or in the form of options exercisable, at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(B) Such *qualifying investors* must hold 50.1 percent of the voting stock and all general partnership interests within the control group, and must have *de facto* control group and of the applicant;

(C) The remaining 10 percent of the applicant's (or licensee's) total equity may be owned by *qualifying investors,* either unconditionally or in the form of stock options not subject to the restrictions of paragraph (b)(5)(i)(A) of this section, or by any of the following entities, which may not comply with section 24.720(n)(1):

(1) Institutional investors, either unconditionally or in the form of stock options;

(2) Noncontrolling *existing investors* in any *preeexisting entity* that is a member of the *control group,* either unconditionally or in the form of stock options; or

(*3*) Individuals that are members of the applicant's (or licensee's) management, either unconditionally or in the form of stock options.

(D) Following termination of the three-year period specified in paragraph (b)(5)(i) of this section, *qualifying investors* must continue to own at least 10 percent of the applicant's (or licensee's) total equity, either unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(5)(i)(A) of this section. The restrictions specified in paragraph (b)(5)(i)(C)(*1*) through (3) of this section no longer apply to the remaining equity after termination of such three-year period.

(ii) At the election of an applicant (or licensee) whose *control group's* sole member is a *preexisting entity,* the 25 percent minimum equity requirements set forth in paragraph (b)(5)(i) of this section shall apply, except that only 10 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors* and that the remaining 15 percent of the applicant's (or licensee's) total equity may be held by *qualifying investors* or noncontrolling *existing investors* in such *control group* member or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 15 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(5)(i) of this section.

(6) *Control Group Minimum 50.1 Percent Equity Requirement.* In order to be eligible to exclude *gross revenues* and *total assets* of persons or entities identified in paragraph (b)(4) of this section, an applicant (or licensee) must comply with the following requirements:

(i) Except for an applicant (or licensee) whose sole control group member is a *preexisting entity,* as provided in paragraph (b)(6)(ii) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) *control group* must own at least 50.1 percent of the applicant's (or licensee's) total equity as follows:

(A) at least 30 percent of the applicant's (or licensee's) total equity must be held by *qualifying minority and/or women investors,* either unconditionally or in the form of options exercisable, at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(B) Such *qualifying minority and/or women investors* must hold 50.1 percent of the voting stock and all general partnership interests within the control group and must have *de facto* control of the control group and of the applicant;

(C) The remaining 20.1 percent of the applicant's (or licensee's) total equity may be owned by *qualifying investors,* either unconditionally or in the form of stock options not subject to the restrictions of paragraph (b)(5)(i)(A) of this section, or by any of the following entities, which may not comply with § 24.720(n)(1):

(1) Institutional investors, either unconditionally or in the form of stock options;

(2) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group,* either unconditionally or in the form of stock options; or

(3) Individuals that are members of the applicant's (or licensee's) management, either unconditionally or in the form of stock options.

(D) Following termination of the three-year period specified in paragraph (b)(6)(i) of this section, *qualifying minority and/or women investors* must continue to own at least 20 percent of the applicant's (or licensee's) total equity, either unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(6)(i)(A) of this section. The restrictions specified in paragraph (b)(6)(i)(C)(*1*) through (*3*) of this section no longer apply to the remaining equity after termination of such three-year period.

(ii) At the election of an applicant (or licensee) whose *control group's* sole member is a *preexisting entity,* the 50.1 percent minimum equity requirements

set forth in paragraph (b)(6)(i) of this section shall apply, except that only 20 percent of the applicant's (or licensee's) total equity must be held by *qualifying minority and/or women investors,* and that the remaining 30.1 percent of the applicant's (or licensee's) total equity may be held by *qualifying minority and/or women investors,* or noncontrolling *existing investors* in such **control group** member or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 30.1 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(6)(i) of this section.

(7) *Calculation of Certain Interests.* Except as provided in paragraphs (b)(5) and (b)(6) of this section, ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that such agreements may not be used to appear to terminate or divest ownership interests before they actually do so, in order to comply with the *nonattributable equity* requirements in paragraphs (b)(3)(i) and (b)(4)(i) of this section.

(8) *Aggregation of Affiliate Interests.* Persons or entities that hold interest in an applicant (or licensee) that are *affiliates* of each other or have an identify of interests identified in § 24.720(l)(3) will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the *nonattributable equity* requirements in paragraphs (b)(3)(i) and (b)(4)(i) of this section.

Example 1 of paragraph (b)(8). ABC Corp. is owned by individuals, A, B, and C, each having an equal one-third voting interest in ABC Corp. A and B together, with two-thirds of the stock have the power to control ABC Corp. and have an identity of interest. If A & B invest in DE Corp., a broadband PCS applicant for block C, A and B's separate interests in DE Corp. must be aggregated because A and B are to be treated as one person.

Example 2 for paragraph (b)(8). ABC Corp. has subsidiary BC Corp., of which it holds a controlling 51 percent of the stock. If ABC Corp. and BC Corp., both invest in DE Corp., their separate interests in DE Corp. must be aggregated because ABC Corp. and BC Corp. are affiliates of each other.

(c) *Short-Form and Long-Form Applications: Certifications and Disclosure*—(1) *Short-form Application. In addition to certifications and disclosures required by Part 1. subpart Q* of this Chapter and § 24.813, each applicant for a license for frequency Block F shall certify on its short-form application (Form 175) that it is eligible to bid on and obtain such license(s), and (if applicable) that it is eligible for designated entity status pursuant to this section and § 24.720, and shall append the following information as an exhibit to its Form 175:

(i) For an applicant that is a *publicly traded corporation with widely disbursed voting power*:

(A) A certified statement that such applicant complies with the requirements of the definition of *publicly traded corporation with widely disbursed voting power* set forth in § 24.72(m);

(B) The identify of each *affiliate* of the applicant if not disclosed pursuant to § 24.813; and

(C) The applicant's *gross revenues* and *total assets,* computed in accordance with paragraphs (a) and (b) of this section.

(ii) For all other applicants:

(A) The identity of each member of the applicant's *control group,* regardless of the size of each member's total interest in the applicant, and the percentage and type of interest held;

(B) The citizenship and the gender or minority group classification for each member of the applicant's *control group* if the applicant is claiming status as a *business owned by members of minority groups and/or women*;

(C) The status of each *conrtrol group* member that is an *institutional investor,* an *existing investor,* and/or a member of the applicant's management;

(D) The identify of each *affiliate* of the applicant and each *affiliate* of individuals or entities identified pursuant to paragraphs (c)(1)(ii)(A) and (c)(1)(ii)(C) of this section if not disclosed pursuant to § 24.813.

(E) A certification that the applicant's sole *control group* is a *preexisting entity,* if the applicant makes the election in either paragraph (b)(5)(ii) or (b)(6)(ii) of this section; and

(F) The applicant's *gross revenues* and *total assets,* computed in accordance with paragraphs (a) and (b) of this section.

(iii) for each applicant claiming status as a *small business consortium,* the information specified in paragraph (c)(1)(ii) of this section, for each member of such consortium.

(2) *Long-form Application.* In addition to the requirements in subpart I of this part and other applicable rules (e.g. § 24.204(f), 20.6(e), 20.9(b)), each applicant submitting a long-form application for license(s) for frequency Block F shall, in an exhibit to its long-form application.

(i) Disclose separately and in the aggregate the *gross revenues* and *total assets,* computed in accordance with paragraphs (a) and (b) of this section, for each of the following: the applicant; the applicant's *affiliates,* the applicant's *control group* members; the applicant's attributable investors; and *affiliates* of its attributable investors;

(ii) List and summarize all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility for a license(s) for frequency Block F and its eligibility under §§ 24.711 through 24.270, including the establishment of *de facto* and *de jure* control; such agreements and instruments include articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, partnership agreements, management agreements, joint marketing agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written; and

(iii) List and summarize any investor protection agreements and identify specifically any such provisions in those agreements identified pursuant to paragraph (c)(2)(ii) of this section, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees.

(3) *Records Maintenance.* All applicants, including those that are winning bidders, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including those documents referenced in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section and any other documents necessary to establish eligibility under this section or under the definitions of *small business and/or business owned by members of minority groups and/or women.* Licensees (and their successors in interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (Form 175), whichever is earlier.

(d) *Audits.* (1) Applicants and licensees claiming eligibility under this section or §§ 24.711 through 24.720 shall be subject to audits by the Commission, using in-house and contract resources. Selection for audit

may be random, on information, or on the basis of other factors.

(2) Consent to such audits is part of the certification included in the short-form application (Form 175). Such consent shall include consent to the audit of the applicant's or licensee's books, documents and other material (including accounting procedures and practices) regardless of form or type, sufficient to confirm that such applicant's or licensee's representations are, and remain, accurate. Such consent shall include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business, or keeping records regarding licensed broadband PCS service and shall also include consent to the interview of principals, employees, customers and suppliers of the applicant or licensee.

(e) *Definitions.* The terms *affiliate, business owned by members of minority groups and women, consortium of small businesses, control group, existing investor, gross revenues, institutional investor, members of minority groups, nonattributable equity, preexisting entity, publicly traded corporation with widely dispersed voting power, qualifying investor, qualifying minority and/or woman investor, small business and total assets* used in this section are defined in § 24.720.

8. A new § 24,716 is added to Subpart H to read as follows:

§ 24.716 Upfront payments, down payments, and installment payments for licenses for frequency Block F.

(a) *Upfront Payments and Down Payments.* (1) Each eligible bidder for licenses on frequency Block F subject to auction shall pay an upfront payment of $0.015 per MHz per pop for the maximum number of licenses (in terms of MHz-pops) on which it intends to bid pursuant to § 1.2106 of this chapter and procedures specified by public Notice.

(2) Each winning bidder shall make a down payment equal to ten percent of its winning bid (less applicable bidding credits); a winning bidder shall bring its total amount on deposit with the Commission (including upfront payment) to five percent of its net winning bid within five business days after the auction closes, and the remainder of the down payment (five percent) shall be paid within five business days after the application required by § 24.809(b) is granted.

(b) *Installment Payments.* Each eligible licensee of frequency Block F may pay the remaining 90 percent of the net auction price for the license in installment payments pursuant to § 1.2110(e) of this chapter and under the following terms:

(1) For an eligible licensee with *gross revenues* exceeding $75 million (calculated in accordance with § 24.709(a)92) and (b)) in each of the two preceding years (calculated in accordance with 34.720(f)), interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 3.5 percent; payments shall include both principal and interest amortized over the term of the license.

''(2) For an eligible licensee with *gross revenues* not exceeding $75 million (calculated in accordance with § 24.709(a)(2) and (b)) in each of the two preceding years, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first year and payments of interest and principal amortized over the remaining nine years of the license term.

''(3) For an eligible licensee that qualifies as a Small business or as a consortium of small businesses, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first two years and payments of interest and principal amortized over the remaining eight years of the license term.

''(4) For an eligible licensee that qualifies as a business owned by members of minority groups and/or women, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first three years and payments of interest and principal amortized over the remaining seven years of the license term.

''(5) For an eligible licensee that qualifies as a small business owned by members of minority groups and/or women or as a consortium of small business owned by members of minority groups and/or women, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first six years and payments of interest and principal amortized over the remaining four years of the license term.

(c) *Unjust Enrichment.* (1) If a licensee that utilizes installment financing under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for installment payments, the licensee must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of assignment or transfer as a condition of approval.

''(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of such change as a condition of approval. A licensee's (or other attributable entity's) increased gross revenues or increased total assets due to nonattributable equity investments (i.e., from sources whose gross revenues and total assets are not considered under § 24.709(b)), debt financing, revenue from operations or other investments, business development or expanded service shall not be considered to result in the licensee losing eligibility for installment payments.

''(3) If a licensee seeks to make any change in ownership that would result in the licensee qualifying for a less favorable installment plan under this section, the licensee shall seek Commission approval and must adjust its payment plan to reflect its new eligibility status. A licensee may not switch its payment plan to a more favorable plan.

9. A new § 24.717 is added to Subpart H to read as follows:

§ 24.717 Bidding credits for licenses for frequency Block F.

(a) A winning bidder that qualifies as a small business or a consortium of small businesses may use a bidding credit of ten percent to lower the cost of its winning bid.

(b) A winning bidder that qualifies as a business owned by members of minority groups and/or women may use a bidding credit of fifteen percent to lower the cost of its winning bid.

(c) A winning bidder that qualifies as a small business owned by members of minority groups and/or women or a consortium of small business owned by members of minority groups and/or women may use a bidding credit of twenty-five percent to lower the cost of its winning bid.

(d) *Unjust Enrichment.* (1) If during the term of the initial license grant (*see* § 24.15), a licensee that utilizes a bidding credit under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for bidding credits or seeks to make any other change in ownership that would result in the licensee no

longer qualifying for bidding credits under this section, the licensee must seek Commission approval and reimburse the government for the amount of the bidding credit as a condition of the approval of such assignment, transfer or other ownership change.

(2) If during the term of the initial license grant (*see* § 24.15), a licensee that utilizes a bidding credit under this section seeks to assign or transfer control of its license to an entity meeting the eligibility standards for lower bidding credits or seeks to make any other change in ownership that would result in the licensee qualifying for a lower bidding credit under this section, the licensee must seek Commission approval and reimburse the government for the difference between the amount of the bidding credit obtained by the licensee and the bidding credit for which the assignee, transferee or licensee is eligible under this section as a condition of the approval of such assignment, transfer or other ownership change.

10. Section 24.720 is amended by revising paragraphs (l)(11)(ii) and (n)(3) and adding paragraph (n)(4) to read as follows:

§ 24.720 Definitions.

* * * * *

(l) * * *

(11) * * *

(ii) For purposes of § 24.713(a)(2) and paragraph (b)(2) of this section, an entity controlled by *members of minority groups* is not considered an *affiliate* of an applicant (or licensee) that qualify as a *business owned by members of minority groups and/or women* if affiliation would arise solely from control of such entity by members of the applicant's (or licensee's) control group who are *members of minority groups*. For purposes of this paragraph (l)(11)(ii), the term minority-controlled entity shall mean, in the case of a corporation, an entity in which 50.1 percent of the voting interests is owned by *members of minority groups* or, in the case of a partnership, all of the general partners are *members of minority groups* or *entities controlled by members of minority groups*; and, in all cases, one in which *members of minority groups* have both *de jure* and *de facto* control of the entity.

* * * * *

(n) * * *

* * * * *

(3) For purposes of assessing compliance with the minimum equity requirements of § 24.709(b) (5) and (6), where such equity interests are not held directly in the applicant, interests held by *qualifying investors* shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

(4) For purposes of assessing compliance with the minimum equity requirements of § 24.713(b) (5) and (6), where such equity interests are not held directly in the applicant, interests held by *qualifying investors* and *qualifying minority and/or women investors* shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

[FR Doc. 95–16130 Filed 6–29–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket Nos. 91–221 and 87–8; 94–149 and 91–140; and 94–150, 92–51 and 87–154; DA 95–1373]

Mass Media Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission granted an extension of time to file reply comments in the above three proceedings in response to a request filed by the Minority Media and Telecommunications Council to extend the filing dates for two of the three proceedings. The three related rulemaking items involve ownership of television stations, minority and female ownership of mass media facilities, and attribution of ownership interests.

The Commission had already granted an extension of the original deadline for filing comments in the three proceedings from April 17, 1995, to May 17, 1995, and had extended the original deadline for filing reply comments from May 17, 1995, to June 19, 1995. 60 Fed. Reg. 19566 (April 19, 1995). Petitioners requested an additional two-week extension of time to file reply comments in the proceedings dealing with minority and female ownership and attribution. The Commission determined that a three-week extension was warranted for all three proceedings because of the possible relevance of the issues addressed by the Supreme Court in *Adarand Construction* v. *Pena*, No. 93–1841 (June 12, 1995).

DATES: Reply comments are now due on July 10, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley Halprin or Mania Baghdadi at (202) 776–1653, or Robert Kieschnick at (202) 739–0764.

SUPPLEMENTARY INFORMATION:

Order Granting Extension of Time for Filing Reply Comments

Adopted: June 16, 1995; Released: June 16, 1995

By the Chief, Mass Media Bureau:

1. On December 15, 1994, the Commission adopted three related rulemaking items regarding ownership of television stations, minority and female ownership of the mass media, and attribution of ownership interests. *Further Notice of Proposed Rule Making* in MM Docket Nos. 91–221 and 87–8, 10 FCC Rcd 3524 (1995) 60 FR 6490, February 2, 1995 (*TV Ownership Further Notice*); *Notice of Proposed Rule Making* in MM Docket Nos. 94–149 and 91–140, 10 FCC Rcd 2788 (1995) 60 FR 6068, February 1, 1995 (*Minority/Female Ownership Notice*); *Notice of Proposed Rule Making* in MM Docket Nos. 94–150, 92–51, and 87–154, 10 FCC Rcd 3606 (1995) 60 FR 6483, February 2, 1995 (*Attribution Notice*). Comments in all three proceedings were initially due on April 17, 1995, and reply comments were initially due on May 17, 1995. By *Order* released April 7, 1995 60 FR 19566, April 19, 1995, the time for filing comments in the three proceedings was extended to May 17, 1995, and the time for filing reply comments was extended to June 19, 1995. In addition, in an *Order* released on June 15, 1995, we extended the time for filing reply comments in response to the *TV Ownership Further Notice* to June 30, 1995.

2. On June 16, 1995, the Minority Media and Telecommunications Council (Petitioner) filed a request for an additional two-week extension of time to file reply comments in response to the *Attribution Notice* and the *Minority/Female Ownership Notice*. Petitioner contends additional time is needed to analyze the effect of the Commission's minority ownership policies of the Supreme Court's recent decision in *Adarand Construction* v. *Pena*, No. 93–1841 (June 12, 1995).

3. As set forth in Section 1.46 of the Commission's Rules, 47 CFR § 1.46, it is our policy that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. The initial comment period in all three proceedings was longer than usual, and one 30-day extension of time for all three proceedings has already been granted. However, because of the possible relevance of the issues addressed in *Adarand* to the highly

complex rulemakings that are the subject of the instant request, we believe a further extension of the reply comment deadline for the *Minority/ Female Ownership Notice* and the *Attribution Notice* is warranted. Because there may be benefit to a concurrent schedule for the three proceedings, we also, on our own motion, extend the reply comment deadline for the *TV Ownership Further Notice*.

4. Accordingly, it is ordered that the Motion for Extension of Time filed in MM Docket Nos. 94–150, 92–51, 87–154, 94–149 and 91–140 by the Minority Media and Telecommunications Council IS granted to the extent detailed above.

5. It is further ordered that the time for filing reply comments in the three above-captioned proceedings is extended to July 10, 1995.

6. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and Sections 0.204(b), 0.283, and 1.45 of the Commission's Rules, 47 CFR §§ 0.204(b), 0.283, and 1.45.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 95–16072 Filed 6–29–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 95–87, RM–8644]

Radio Broadcasting Services; Hatfield, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by John Harle, requesting the allotment of FM Channel 281C2 to Hatfield, Arkansas, as that community's first local aural transmission service. Coordinates used for this proposal are 34–31–04 and 94–23–46.

DATES: Comments must be filed on or before August 18, 1995, and reply comments on or before September 18, 1995.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: John Harle, 951 Redan, Houston, TX 77009.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–87, adopted June 8, 1995, and released June 27, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–16117 Filed 6–29–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. 74–14; Notice 96]

RIN 2127–AF41

Anthropomorphic Test Dummy; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes modifications to the Hybrid III test dummy, which is specified by the agency for use in compliance testing under Standard No. 208, Occupant crash protection. The agency is proposing minor modifications to the femurs and ankles to improve biofidelity, and is considering specifying use of a neck shield. The changes would have practically no effect on Standard No. 208 test results, but would make the compliance test dummy more useful to vehicle manufacturers in the more severe impact conditions of some research and vehicle development programs. This rulemaking results from petitions submitted by Ford, Toyota, Honda and Nissan.

DATES: Comments must be received by August 29, 1995.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. (Docket Room hours are 9:30 a.m.-4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Backaitis, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–4912. Fax: (202) 366–4329.

SUPPLEMENTARY INFORMATION: Standard No. 208, *Occupant Crash Protection*, currently permits the use of either the Hybrid III test dummy or the older Hybrid II dummy in compliance testing. Effective September 1, 1997, however, the Standard will specify the use of only a single dummy, the Hybrid III dummy.

NHTSA adopted the Hybrid III dummy as an alternative to the older dummy in a final rule published in the **Federal Register** (51 FR 26688) on July 25, 1986. That rulemaking resulted from a petition submitted by General Motors (GM). The specifications for the Hybrid III dummy appear in subpart E of 49 CFR part 572.

The Hybrid III dummy is the most human like test dummy currently available and represents a number of advances over the earlier dummy. Among other things, the Hybrid III dummy has a more humanlike seated posture, head, neck, chest, and lumbar spine designs that meet biofidelic impact response requirements, and the capability of monitoring almost four times as many injury-indicating parameters as compared with the Hybrid II dummy. NHTSA decided to specify exclusive use of the Hybrid III dummy in a final rule published in the **Federal Register** (58 FR 59189) on November 8, 1993.

The Hybrid III dummy has seen widespread use in recent years. A number of manufacturers have used that dummy for Standard No. 208 certification purposes. Moreover, many manufacturers use this advanced

dummy in their research and developmental testing. Finally, NHTSA uses the Hybrid III dummy in its New Car Assessment Program (NCAP). This program involves testing new cars and trucks by crashing them into a fixed collision barrier at 35 mph, which is five mph faster and 36 percent more severe than the crash test specified in Standard No. 208. NCAP results are made available to consumers as the tests are completed each model year, and insurance and consumer organizations use the results as the basis for information they publish.

In using the Hybrid III dummy, vehicle manufacturers have identified three areas in which they believe the dummy should be improved. Two of these areas were identified by Ford in a petition for rulemaking submitted in March 1991, and the third was identified in petitions submitted by Toyota, Honda and Nissan between September 1993 and April 1994.

One of the requests in Ford's petition was for NHTSA to increase the ankle dorsiflexion motion of the Hybrid III dummy. That company argued that the current dummy's ankles have a lower rotation range compared to human ankles. Ford believes that this can cause unrealistic transfer of crash forces through the lower leg and knee to the femur, adversely affecting the femur response.

Ford's other request was for the agency to specify the use of a soft foam neck shield for the Hybrid III dummy. That company believes that the dummy's neck is too small in cross section for air bag applications and that portions of a deploying air bag can get caught around the neck and in the concave sections of the bottom of the dummy head. According to Ford, when this occurs, the dummy's head snaps rearward in an unhumanlike manner, and unrealistic head and neck responses are measured by the dummy instrumentation. That manufacturer stated that this problem can be avoided by using a special purpose shield around the dummy's neck when testing with an air bag.

Toyota, Honda and Nissan petitioned NHTSA to increase femur flexion ranges in the dummy. They argued that this change is needed to avoid unhumanlike femur-to-pelvic bone interaction, or hip lock. According to these petitioners, hip lock produces acceleration spikes throughout the dummy in general, and in the thorax in particular, resulting in overly high chest g's for the unrestrained (air bag only), passenger-side test condition. Several manufacturers, including Ford, Chrysler, Mazda and Mitsubishi, submitted letters supporting the basic intent of the Toyota/Honda/Nissan petitions, although not necessarily all of the specific arguments.

NHTSA notes that, until it received these petitions, it was unaware that any manufacturers had these concerns about the Hybrid III dummy. These issues were not raised during the rulemaking to add the dummy as a compliance option for Standard No. 208. Moreover, the agency had not encountered any of the alleged problems during Standard No. 208 compliance tests or evaluations of the dummy in sled tests.

NHTSA also notes that, in evaluating the petitions, the agency was aware that manufacturers use the Hybrid III dummy in contexts other than the test conditions specified in Standard No. 208. To fully understand the problems alleged by the petitioners, the agency had to consider the test conditions under which the problems arise.

The test conditions vary according to the purposes for which the dummy is used. For the agency to specify the Hybrid III dummy in Standard No. 208, it is only necessary for the dummy to be biofidelic and otherwise appropriate for the specific injury criteria and impact conditions specified in that standard. And, to the extent that the Hybrid III dummy is used for NCAP purposes, it is necessary for it to be appropriate for those test conditions. The agency understands, however, that manufacturers wish to be able to use the same dummy for a third purpose, for research and vehicle development. In these applications, the dummies are often exposed to much more severe conditions than specified in Standard No. 208 or experienced under NCAP.

NHTSA granted each of the petitions for rulemaking and conducted extensive analysis, including a test program, of the issues raised in the petitions. Among other things, the agency consulted with the Society of Automotive Engineers (SAE) Human Biomechanics and Simulations Committee concerning the hip lock issue.

The agency has prepared a Technical Assessment which presents the agency's analysis of the issues raised by the petitioners. A copy of that document is being placed in the docket for this rulemaking. While the conclusions of that document are summarized below, persons who are interested in the details of the agency's analysis are encouraged to read the Technical Assessment.

As discussed in the Technical Assessment, the agency's analysis shows that motion ranges of the Hybrid III hip joint and ankle have minor biomechanical shortcomings that can easily be improved with minimal design modifications.

With respect to the hip joint, the current dummy design is within generally accepted biomechanical limits for femur free motion range. However, the hip joint design needs modification to assure the same motion range between the right and left femurs. Moreover, to the extent that the dummy is used in impact environments where the dummy will be forced to exceed these limits, i.e., environments more severe than that of the Standard No. 208 test procedure or the NCAP test procedure, it is desirable to prevent metal to metal contact from occurring between the femur and the pelvic bone. Such contact can cause spurious test results. An SAE Task Force has identified modifications in the design of the femurs that would address forced motion range needs of the dummy's hip joints and eliminate the possibility of either metal to metal or hard contact impacts at maximum femur flexion. Agency testing indicates that the dummy femur-hip joint modification will result in somewhat reduced chest responses for those test exposures in which the hip joint and the ankle are forced to exceed the available motion ranges, i.e., test exposures considerably more severe than Standard No. 208 testing.

With respect to the ankle, the agency's analysis shows that modifying the ankle to allow 45 degrees of dorsiflexion instead of the current 30 degrees would be anthropometrically in the correct direction.

NHTSA has tentatively concluded that the specifications for the Hybrid III dummy should be changed to incorporate these minor femur and ankle modifications. As part of these changes, a calibration test would be added for hip joint-femur flexion.

The proposed modifications would have practically no effect on the dummy impact responses for either Standard No. 208 or NCAP testing. The agency believes, however, that the modifications would provide a more realistic assessment of the effectiveness of occupant protection systems under more severe impact conditions. Changing the part 572 specifications to incorporate these modifications would help ensure that manufacturers can use the same dummies for Standard No. 208 certification testing and for research and vehicle development testing.

NHTSA believes the evidence is less clear with respect to whether a neck shield should be specified for the Hybrid III dummy. The agency has evaluated the neck shield recommended by Ford. As discussed in the agency's

Technical Assessment, the use of the neck shield generates responses of a slightly stiffer neck but does not appear to produce significant differences in the dummy's head kinematics or overall impact responses. The agency specifically requests comments on whether use of the neck shield should be specified. Commenters supporting use of a neck shield are requested to discuss why they believe such use would produce different results. Depending on the comments, the agency may or may not specify use of a neck shield. However, use of a neck shield is reflected in the proposed regulatory text.

NHTSA notes that it contemplates either adding a neck shield to the Hybrid III dummy for purposes of all Standard No. 208 compliance testing or declining to add a neck shield and not providing a manufacturer option in this area. To ensure comparability of test results, the agency believes that all vehicles should, to the extent possible, be tested in the same manner.

NHTSA is proposing to make the amendments effective 30 days after publication of a final rule. However, the agency is requesting comments on whether a later effective date would be more appropriate, and, if so, whether optional compliance should be permitted 30 days after publication of a final rule.

The agency believes that the proposed dummy modifications are so minor that they would not have any significant effect on Standard No. 208 test results, and that it may therefore be in the public interest to make the amendments effective 30 days after issuance of a final rule. Such an effective date would assume that manufacturers do not need to conduct any testing to recertify their vehicles using the modified dummy. The agency requests comments on this assumption and on whether there are any reasons to specify a later effective date, such as September 1, 1997.

To the extent a later effective date were to be specified, the agency could permit optional compliance 30 days after publication of a final rule. Under this scenario, manufacturers could, for an interim period, certify their vehicles using either the earlier or modified Hybrid III dummy. NHTSA notes, however, that it would generally prefer to avoid multiple dummy options, to reduce the complexity and costs of compliance testing. In compliance testing, the agency would want to use the dummy option specified by the manufacturer, and would therefore need to maintain two versions of the Hybrid III dummy. This problem could be avoided by specifying a single date on which the dummy modifications would become effective. The agency requests comments, however, on whether other factors would outweigh this concern and should lead to the combination of a later effective date with optional compliance 30 days after publication of a final rule.

As indicated earlier in this document, the specifications for the Hybrid III dummy appear in subpart E of 49 CFR part 572. The proposed regulatory text reflects the modifications to the dummy that are under consideration by the agency. However, many of the specifications for the Hybrid III dummy are set forth in drawings which are incorporated by reference. Copies of the new or revised drawings, including a revised User's Manual (referred to in Part 572.31(a)(4) as Disassembly, Inspection, Assembly and Limbs Adjustment Procedures for the Hybrid III Dummy), that would be incorporated by reference are being placed in the docket for this rulemaking.

NHTSA notes that it has a policy of ensuring that the dummies specified in part 572 can be manufactured by any manufacturer wishing to do so. The agency is therefore considering whether any persons have proprietary rights in the dummy modifications proposed in this document and, if they do, how the agency can ensure that any manufacturer can produce the modified Hybrid III dummy. NHTSA specifically requests comments on this issue. With respect to the dummy drawings that are being placed in the docket in connection with this proposal, the agency has taken steps to ensure that, if incorporated by reference as part of a final rule, the drawings could be freely used by all persons. See letter dated June 1, 1995 to Mr. Muir Parker, President and CEO of First Technology Safety Systems, a copy of which is being placed in the docket.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be ''non-significant'' under the Department of Transportation's regulatory policies and procedures. The proposed amendments would not require any vehicle design changes but would instead only require minor modifications in the test dummies used to evaluate a vehicle's compliance with Standard No. 208. The agency believes that the proposed femur and ankle modifications would not affect the cost of new dummies. The cost of modifying existing dummies would be about $4,400 per dummy for the femurs, and about $610 for the ankles. The cost of a neck shield is about $145. Therefore, the impacts of the proposed amendments would be so minimal that a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. Modifications to dummy designs affect motor vehicle manufacturers, few of which are small entities. As described above, there would be no significant economic impact on those vehicle manufacturers that are small entities. Further, since no price increases would be associated with the proposed rule, small organizations and small governmental units would not be affected in their capacity as purchasers of new vehicles.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this proposed rule.

D. National Environmental Policy Act

NHTSA has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would not have a significant impact on the human environment.

E. Executive Order 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposed rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

F. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured

for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 572

Motor vehicle safety, Incorporation by reference.

In consideration of the foregoing, it is proposed that 49 CFR Part 572 be amended as follows:

PART 572—[AMENDED]

1. The authority citation for Part 572 of Title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Subpart E—Hybrid III Test Dummy

2. Section 572.31 would be amended by revising paragraphs (a)(1), (a)(3), (a)(4), (b) and (e) to read as follows:

§ 572.31 General description.

(a) * * *

(1) The Anthropomorphic Test Dummy Parts List, dated (a date would be inserted), and containing 13 pages, and a Parts List Index, dated (a date would be inserted), containing 8 pages.

* * * * *

(3) A General Motors Drawing Package identified by GM Drawing No. 78051–218, revision S, and subordinate drawings.

(4) Disassembly, Inspection, Assembly and Limbs Adjustment Procedures for the Hybrid III dummy, dated (a date would be inserted).

* * * * *

(b) The dummy is made up of the following component assemblies:

Drawing No.	Revision
78051–61 head assembly—complete	(T)
78051–90 neck assembly—complete.	(A)
78051–89 upper torso assembly—complete	(K)
78051–70 lower torso assembly—without pelvic instrumentation assembly, drawing No. 78051–59	(E)
86–5001–001 leg assembly—complete (LH)	(A)
86–5001–002 leg assembly—complete (RH)	(A)
78051–123 arm assembly—complete (LH)	(D)
78051–124 arm assembly—complete (RH)	(D)

* * * * *

(e) The weights, inertial properties and centers of gravity location of component assemblies shall conform to those listed in drawing 78051–338, revision T.

* * * * *

3. Section 572.33 would be amended by moving Figures 20, 21 and 22 to the end of the section and adding a heading preceding Figure 20, revising paragraph (b) introductory text, and revising Figures 20 and 21, to read as follows:

§ 572.33 Neck.

* * * * *

(b) When the neck and head assembly (consisting of the parts 78051–61, revision T; –84; –90, revision A; –96; –98; –303, revision E; –305; –306; –307, revision X) which has a neck transducer (drawing 83–5001–008) installed in conformance with § 572.36(d) and a neck shield as shown in Figures 20 and 21, is tested in accordance with paragraph (c) of this section, it shall have the following characteristics:

* * * * *

BILLING CODE 4910–59–P

Figures to § 572.33

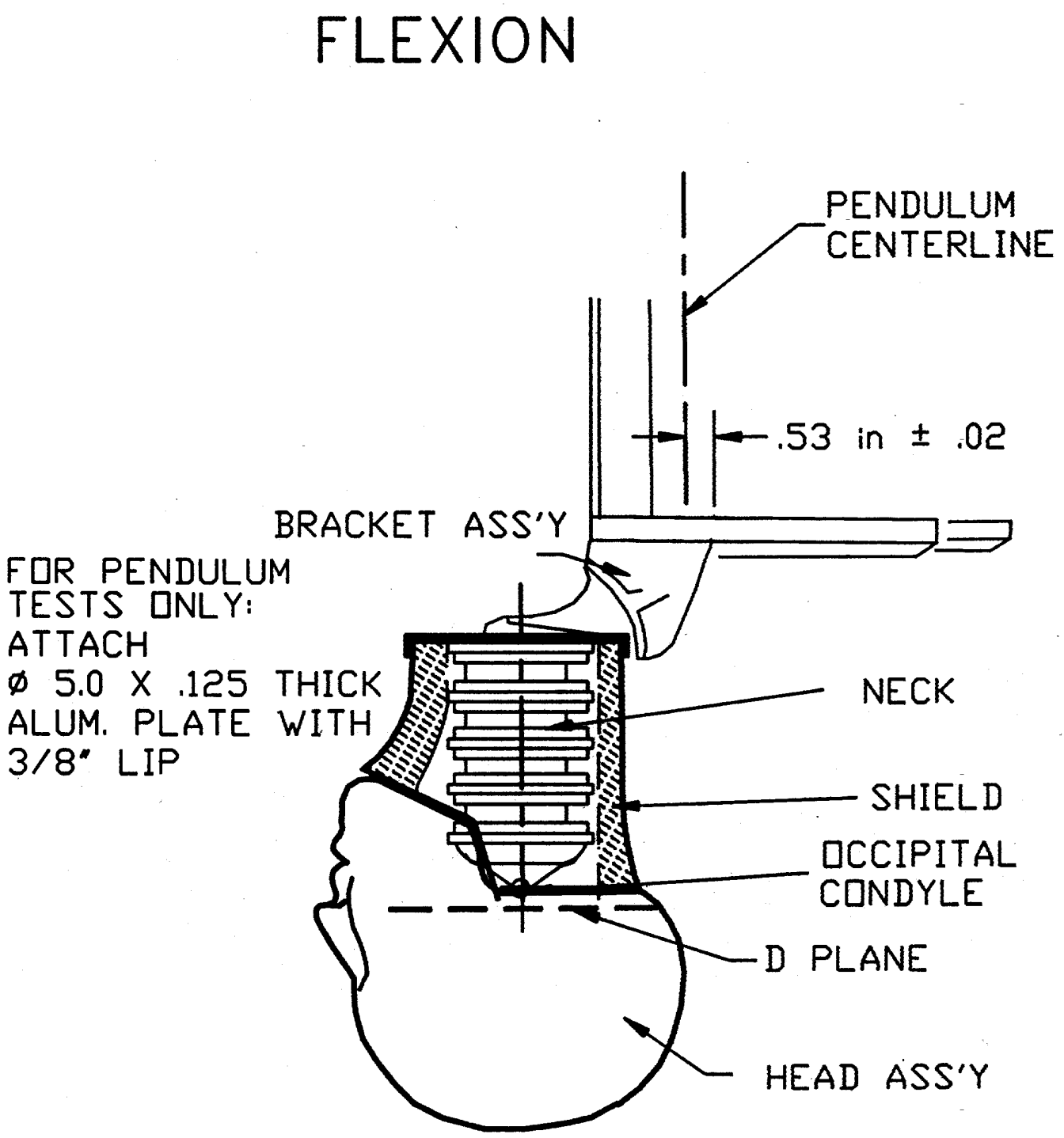

FIGURE 20

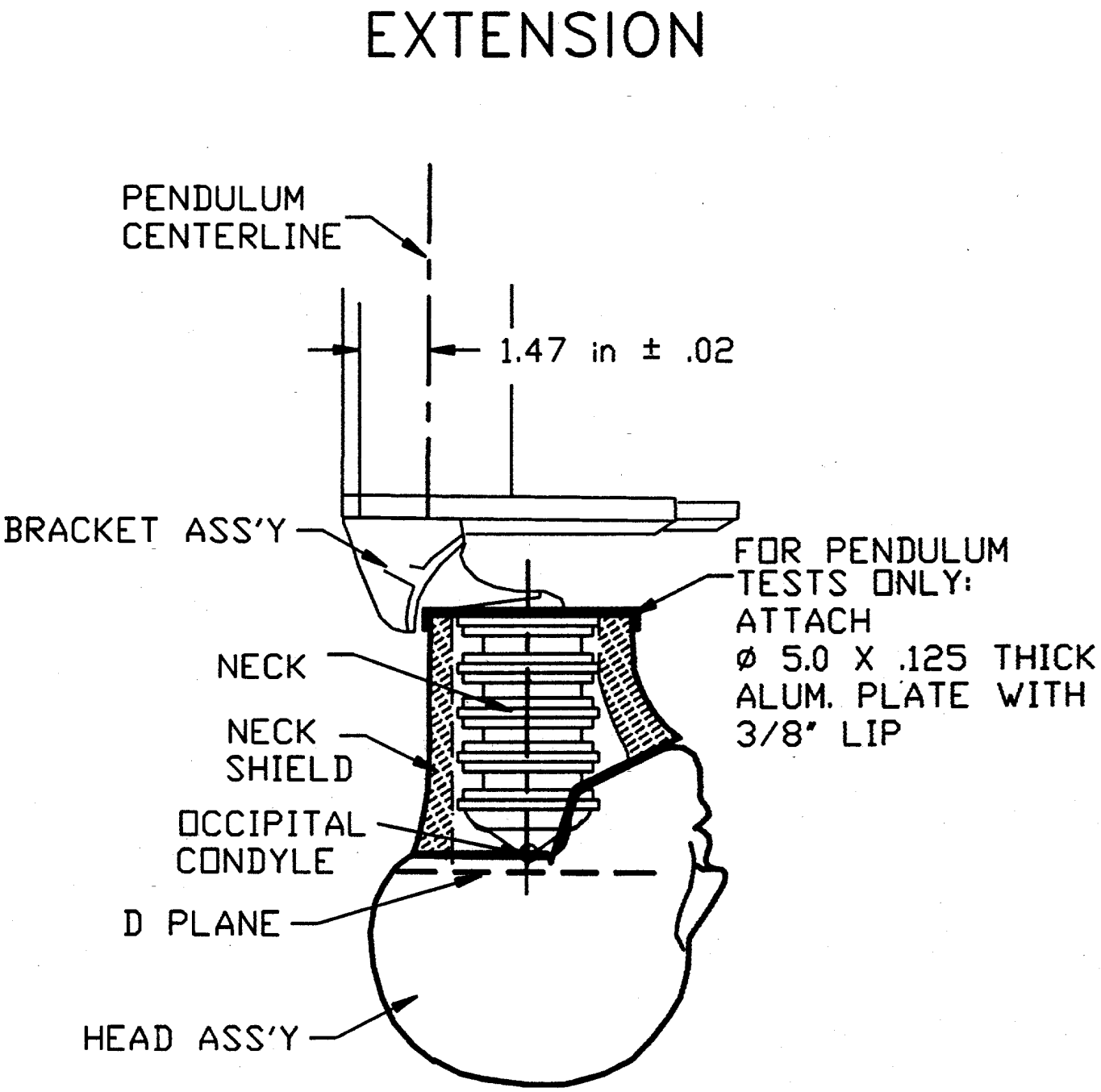

FIGURE 21

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* * * * *

4. Section 572.35 would be amended by moving Figure 24 to the end of the section and adding a heading preceding Figure 24; revising paragraphs (a) through (c); and adding Figures 25 through 27, to read as follows:

§ 572.35 Limbs.

(a) The limbs consist of the following assemblies: leg assemblies 86–5001–001, revision F and –002, revision F, and arm assemblies 78051–123, revision D and –124, revision D, and shall conform to the drawings subtended therein.

(b) *Femur impact response.* (1) When each knee of the leg assemblies is impacted in accordance with paragraph (b)(2) of this section, at 6.9 ft/sec 0.10 ft/sec by the pendulum defined in § 572.36(b), the peak knee impact force, which is a product of pendulum mass and acceleration, shall have a minimum value of not less than 1060 pounds and a maximum value of not more than 1300 pounds.

(2) *Test procedure.* (i) The test material consists of leg assemblies (86–5001–001, revision A) left and (–002, revision A) right with upper leg assemblies (78051–46) left and (78051–47) right removed. The load cell simulator (78051–319, revision A) is used to secure the knee cap assemblies (79051–16, revision B) as shown in Figure 24).

(ii) Soak the test material in a test environment at any temperature between 66 degrees F to 78 degrees F and at a relative humidity from 10% to 70% for a period of at least four hours prior to its application in a test.

(iii) Mount the test material with the leg assembly secured through the load cell simulator to a rigid surface as shown in Figure 24. No contact is permitted between the foot and any other exterior surfaces.

(iv) Place the longitudinal centerline of the test probe so that at contact with the knee it is collinear within 2 degrees with the longitudinal centerline of the femur load cell simulator.

(v) Guide the pendulum so that there is no significant lateral, vertical or rotational movement at time zero.

(vi) Impact the knee with the test probe so that the longitudinal centerline of the test probe at the instant of impact falls within .5 degrees of a horizontal line parallel to the femur load cell simulator at time zero.

(vii) Time zero is defined as the time of contact between the test probe and the knee.

(c) *Hip joint-femur flexion.* (1) When each femur is rotated in the flexion direction in accordance with paragraph (c)(2) of this section, the femur rotation from its initial horizontal orientation at an applied 50 lbs-ft of torque will not be less than 20 deg. and not more than 34 deg., and at 250 lbs-ft of torque not less than 44 deg. and not more than 52 deg.

(2) *Test procedure.*

(i) The test material consists of the assembled dummy, part No. 78051–218 (rev. S) except that (1) leg assemblies (86–5001–001 and 002) are separated from the dummy by removing the 3/8–16 Socket Head Cap Screw (SHCS) (78051–99) but retaining the structural assembly of the upper legs (78051–43 and –44), (2) the abdominal insert (78051–52) is removed and (3) the instrument cover plate (78051–13) in the pelvic bone is replaced by a rigid pelvic bone stabilizer insert (Figure 25a) and firmly secured.

(ii) Seat the dummy on a rigid seat fixture (Figure 25) and firmly secure it to the seat back by bolting the stabilizer insert and the rigid support device (Figure 25b) to the seat back of the test fixture (Figures 26 and 27) while maintaining the pelvis (78051–58) ''B'' plane horizontal.

(iii) Insert a suitable rod (lever arm) into femur shaft opening of the upper leg structure assembly (78051–43/44) and firmly secure it using the 3/8–16 SHCS.

(iv) Apply a suitable force to the lever arm to lift it parallel to the midsagittal plane at a rotation rate of 5 to 10 deg. per second while maintaining the ½ in. shoulder bolt longitudinal centerline horizontal throughout the range of motion until the 250 lbs-ft torque level is reached. Record the applied force (torque) and angle of rotation of the femur with suitable sensors.

(v) Operating environment and temperature are the same as specified in paragraph (b)(3) of this section.

BILLING CODE 4910–59–P

Figures to § 572.35

* * * * *

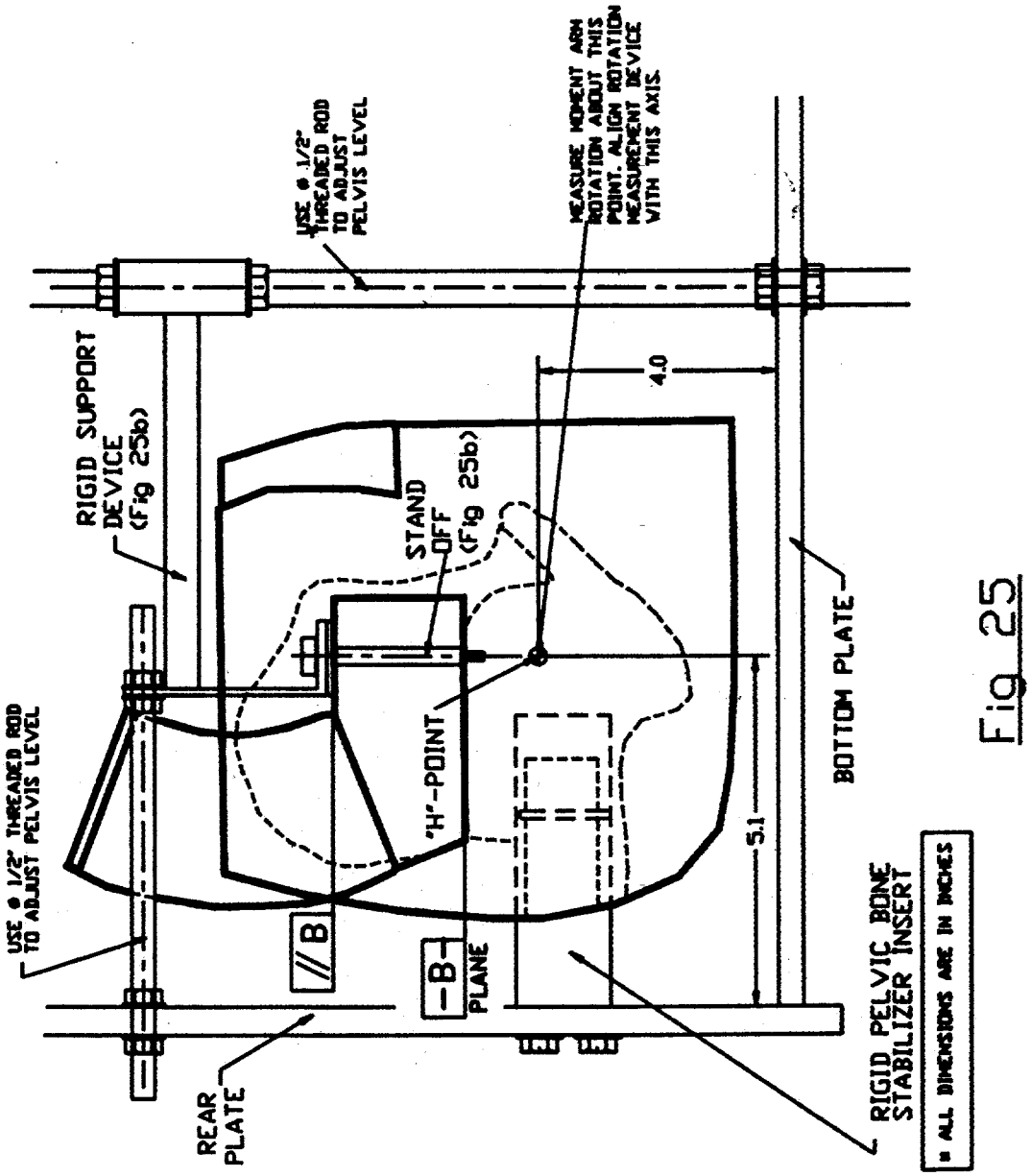
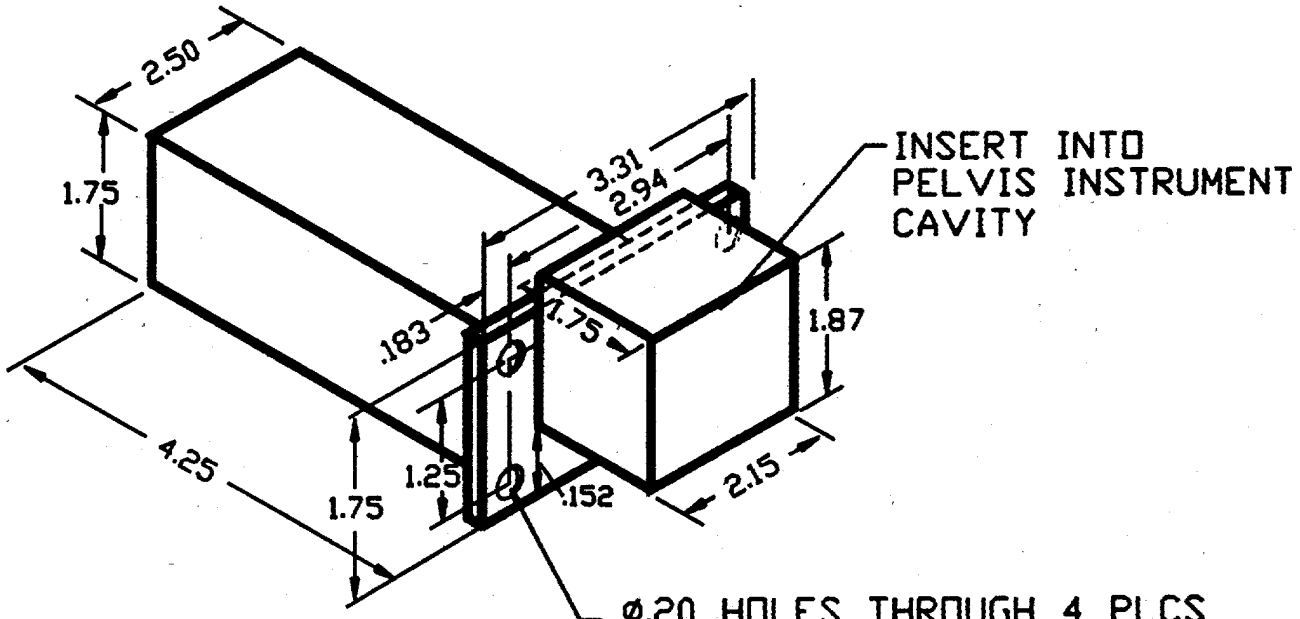
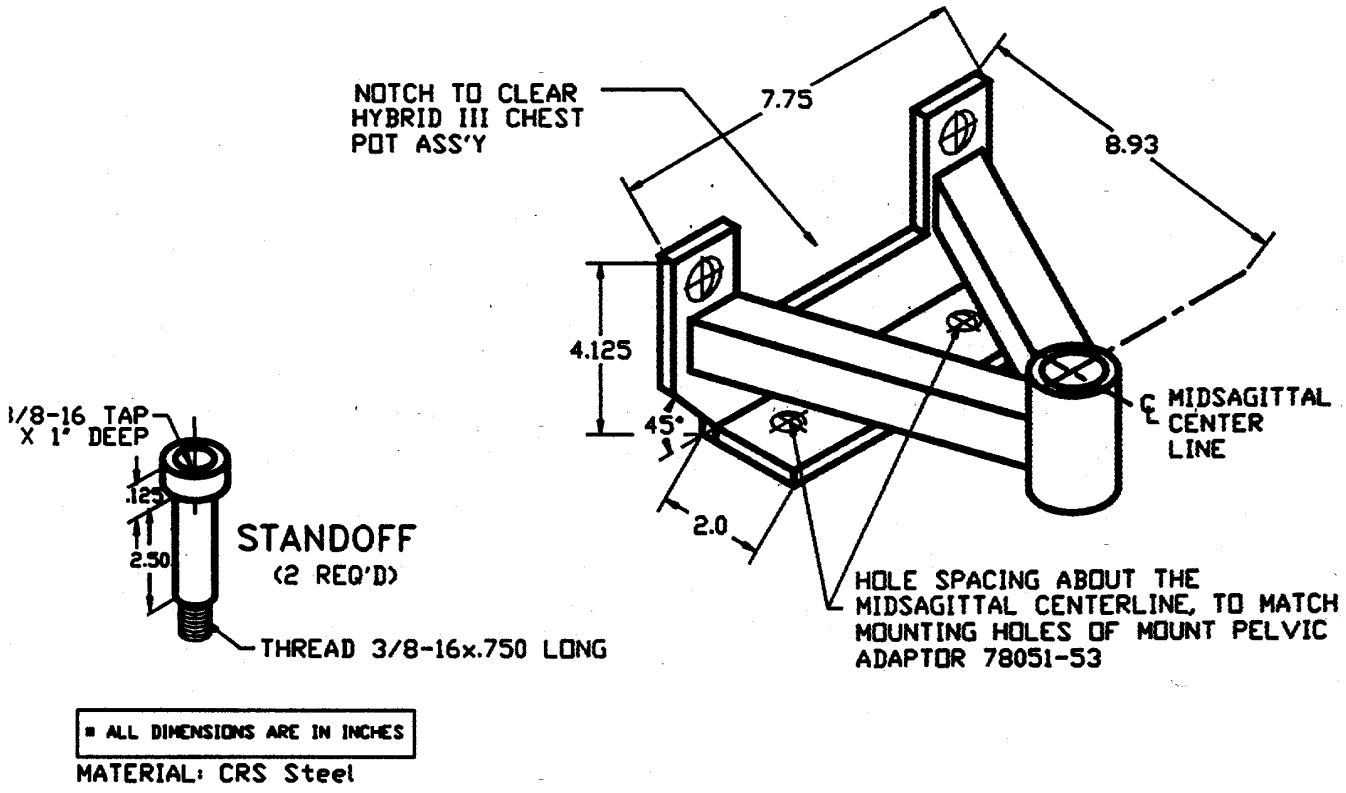


Fig 25



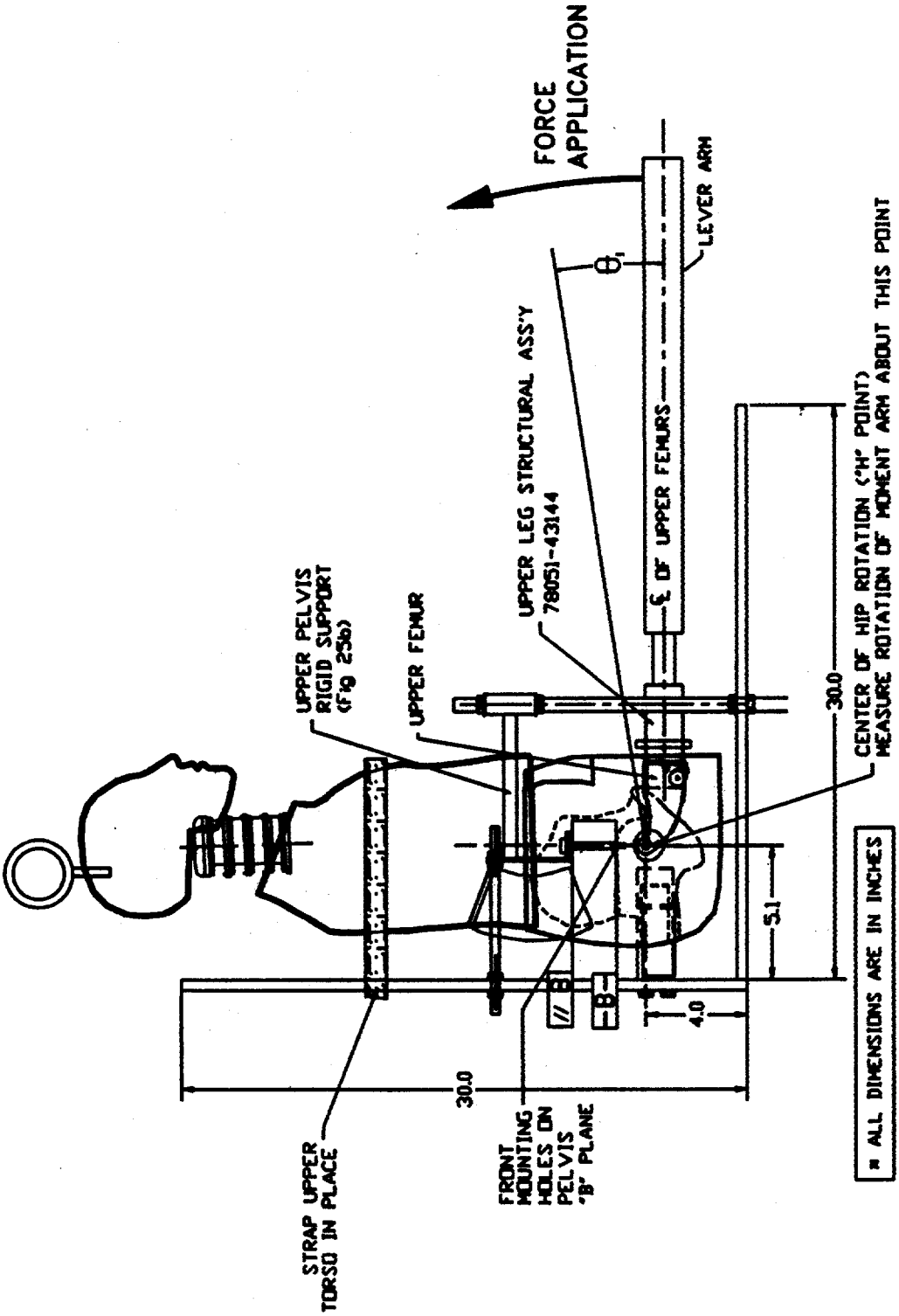
RIGID PELVIC BONE STABILIZER INSERT (REF)

Fig 25a



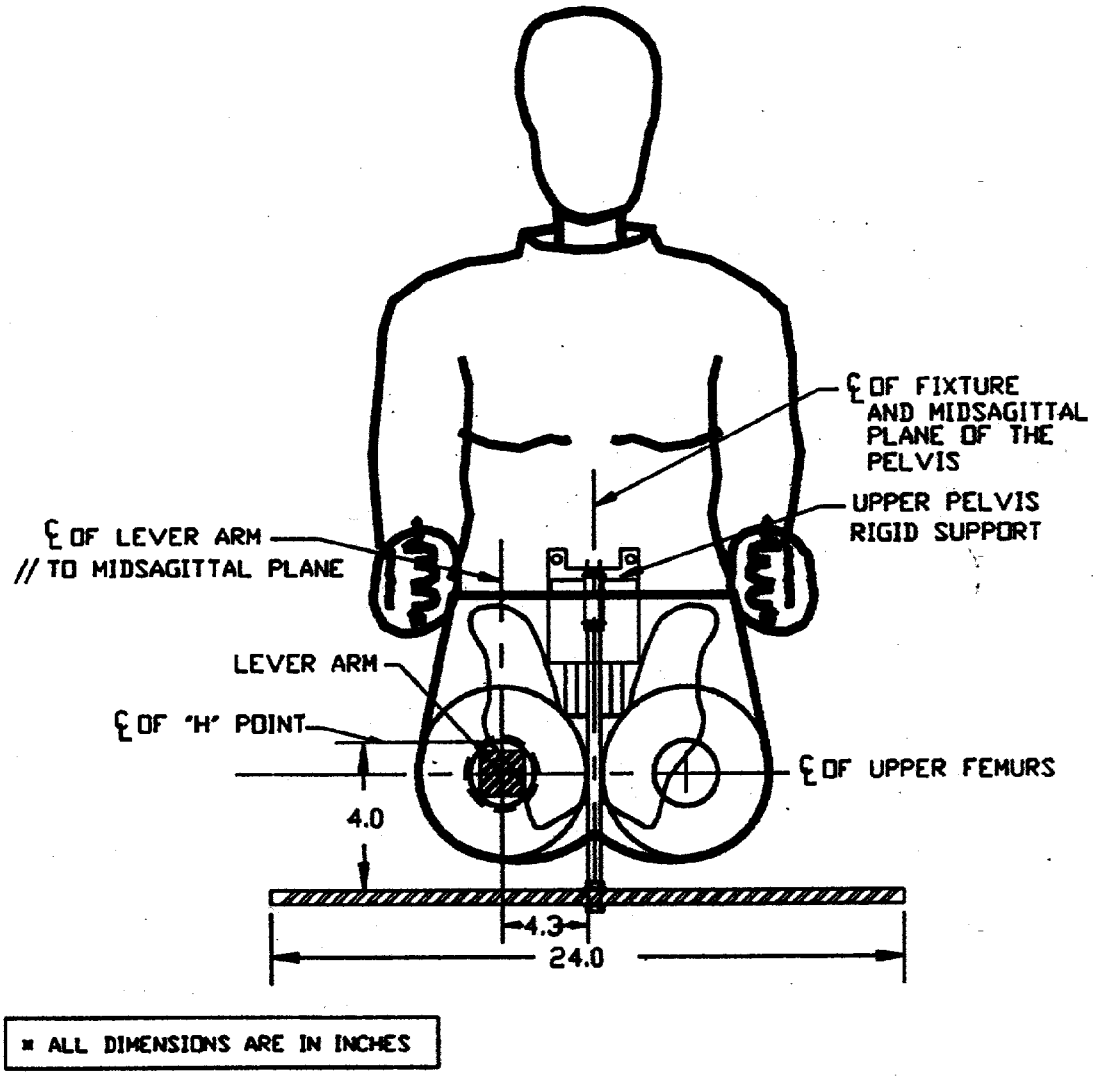
RIGID SUPPORT DEVICE (REF)

Fig 25b



HIP JOINT TEST FIXTURE ASSEMBLY

Fig 26



FRONT VIEW
Fig 27

Issued on June 26, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–16104 Filed 6–29–95; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN: 1018–AC19

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for the Alaska Breeding Population of the Steller's Eider

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of proposed rule; reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) provides notice that the comment period on the proposal to classify the Alaska breeding population of the Steller's eider (*Polysticta stelleri*) as threatened is extended until January 14, 1996, due to significant scientific controversy over the species' status. In addition, the public comment period is hereby reopened.

DATES: The comment period, which originally closed on November 14, 1994, is reopened effective immediately and closes on January 14, 1996.

ADDRESSES: Written comments and materials should be sent to Fairbanks Ecological Services field Office, Endangered Species, U.S. Fish and Wildlife Service, 1412 Airport Way, Fairbanks, Alaska, 99701, telephone (907) 456–0427 or facsimile (907) 456–0346. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ted Swen at the above address (telephone 907/456–0427).

SUPPLEMENTARY INFORMATION:

Background

The smallest of four eider species, the Steller's eider breeds in coastal areas of arctic Alaska and Russia. Worldwide, Steller's eiders still number over one hundred thousand, with the vast majority of individuals nesting in Asia and wintering in Alaskan waters. A small portion of the world's Steller's eiders nest in Alaska and this nesting population is being proposed for listing as a distinct vertebrate population under the endangered Species Act. In recent years the breeding range of the species in Alaska has contracted. The species, which nests locally at several coastal locations in the central Yukon-Kuskokwim Delta, has now virtually disappeared from this region. In Alaska, the species currently nests only in the northwest portion of the North Slope. Recent surveys suggest the species no longer nests in certain areas in which it originally occurred on the North Slope. Factors causing the decline of the species and the contraction of its breeding range in Alaska are not known. Due to the reduction in numbers and contraction of the species' breeding range in Alaska, the Service believes that the remaining population of Steller's eiders is increasingly vulnerable to extirpation.

On July 14, 1994, the Service published a proposed rule (59 FR 35896; July 1, 1994) to list the Alaska breeding population of Steller's eiders as threatened under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Comments received during the initial public comment period indicate scientific controversy exists over the Service's technical interpretation of available data. In order to insure that decisions on endangered and threatened species are based upon the best scientific and commercial data available, the Service now requires that listing proposals be reviewed by three appropriate independent specialists (59 FR 34270). To comply with this recent policy and to adequately address the scientific controversy, the Service is reopening the comment period on the proposal to list the Alaska breeding population of Steller's eiders and now solicits the expert opinions of three independent specialists. All interested parties are invited to comment on this proposal during the comment period. Written comments may now be submitted until January 14, 1996, to the Service office in the **ADDRESSES** section.

Authors

The primary author of this notice is Ted Swem (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 20, 1995.

John G. Rogers,

Director, Fish and Wildlife Service.

[FR Doc. 95–16075 Filed 6–29–95; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Species; Notice of Reclassification of 32 Candidate Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of candidate species reclassification.

SUMMARY: In this document, the U.S. Fish and Wildlife Service (Service) provides explanation for changes in the candidate status of 32 species of plants and animals that are under review for possible addition to the List of Endangered and Threatened Wildlife and Plants (List) under the Endangered Species Act (Act) of 1973, as amended. The changes for which explanation is provided in this document were previously published for 20 plants in the 1993 Plant Notice of Review and for 12 animals in the 1994 Animal Notice of Review.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/358–2171).

SUPPLEMENTARY INFORMATION:

Background

In December 1992, the Service reached a settlement agreement (agreement) with the plaintiffs in the Fund For Animals *et al.* v. Lujan *et al.* case (Civ. No. 92–800) that provides for the Service to review the listing status of species regarded as Category 1 candidates as of September 1, 1992. The Service has historically classified species regarded as candidates for listing under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*) into two primary categories. Category 1 candidates are those species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species. Category 2 candidates are taxa for which information now in the possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which substantial data on biological vulnerability and threat are not currently available to support a proposed listing. Species classified as Category 2* are those whose continued existence is in doubt. Species classified as Category 3 were once considered for listing as threatened or endangered but are no longer under such consideration. For any candidate species covered by the agreement and removed from Category 1 because listing is not warranted, the Service must publish a notice in the **Federal Register** that provides explanation for the removal from Category 1.

This notice provides explanations for previously announced decisions to

remove candidate species from Category 1. The changes announced in this notice reflect changes first published in the 1993 Plant Notice of Review (58 FR 51444) or the 1994 Animal Notice of Review (59 FR 58982). This notice also provides explanation for returning three candidate species covered by the settlement agreement to Category 1 status.

Findings

Two species of animals that were removed from the Category 1 candidate list in the 1994 Animal Notice of Review are now returned to Category 1 status. The northern Idaho ground squirrel (*Spermophilus brunneus*) was incorrectly placed in Category 2 status in the 1994 Animal Notice of Review. Wild specimens of the greenest tiger beetle (*Cicindella tranquebarica viridissima*) were recently discovered near the Santa Ana River, California. Based on this rediscovery and present knowledge of threats, the species is now returned to Category 1 status.

One plant species that was removed from the Category 1 candidate list in the 1993 Plant Notice of Review is being returned to Category 1 status. Although previously thought to be extinct, *Eragrostis fosbergii* (Fosberg's love grass) has been rediscovered and is now classified as a Category 1 candidate.

The remaining 29 reclassifications involve removal from Category 1 status. Eleven species of plants were reclassified because they were included in the 1990 Plant Notice of Review (55 FR 6184) as Category 1*, meaning their continued existence is in doubt. This classification was administratively changed to Category 2* in the 1993 Plant Notice of Review because the absence of reliable reports of extant wild populations would preclude issuing a proposed listing for these taxa. These species retain a high priority for addition to the List, if reliable reports of the species' existence are received. The plants so reclassified are: *Abronia umbellata* ssp. *acutalata* (rose purple sand-verbena), last observed in 1940; *Botrychium subbifoliatum* (makou), last observed in 1940; *Cenchrus agrimonioides* var. *laysanensis* (Laysan agrimony sandbur), last observed in 1973; *Chamaesyce celastroides* var. *tomentella* ('akoko), last observed in the 1920's; *Cyanea longissima* (haha), last observed in 1927; *Eragrostis hosakai,* last observed in 1937; *Lepidium bidentatum* var. *remyi* (Remy's 'anaunau), last observed in 1855; *Lipochaeta degeneri* (small-leaved nehe), last observed in 1928; *Mariscus rockii,* last observed in the early 1900's; *Melicope degeneri* (alani), last observed in the early 1900's; and *Phyllostegia imminuta,* last observed in 1980.

Abutilon virginianum (Indian mallow) was originally collected in Culebra, Puerto Rico, but according to a recent status survey, has not been seen there since 1913. The species was removed from Category 1 status because its continued existence in the wild is in doubt.

Nelson's antelope ground squirrel *(Ammospermophilus nelsoni*) was historically found in the southern San Joaquin Valley of California. Presently the populations are more restricted and are located in the San Joaquin area. The species was removed from Category 1 status because its range is more widespread on slopes and hillsides than originally thought. Also, the destruction, modification, or curtailment of the species' habitat or range will be controlled by implementation of the San Joaquin Endangered Species Recovery Program, which will include setting aside foothill habitat for species such as the San Joaquin kit fox (*Vulpes macrotis mutica*) and giant kangaroo rat (*Dipodomys ingens*). This will provide *de facto* protection for Nelson's antelope ground squirrel.

Aster avitus (Alexander's rock aster) was classified as a Category 1 species based on a 1980 status survey that found only five populations. Since then, 43 additional populations have been found. The discovery of additional populations, coupled with limited information on threats to the species, support removal from Category 1.

Chrysothamnus molestus (Tusayan rabbitbrush) occurs in pinyon-juniper woodland and associated grasslands and shrublands in the southwest. The species was removed from Category 1 primarily because the species was found in many new localities in surveys conducted in 1990 and 1991. Also, the Arizona Plant Recovery Team concluded in a 1991 session that Category 1 designation was premature. The Team is composed of representatives from the Service, U.S. Forest Service, Arizona State University, Arizona Game and Fish Department, Arizona Nature Conservancy, National Park Service, Southwest field biologists, and the Desert Botanical Garden. The species is now known to be extant at 21 locations within Coconino County, Arizona, and numerous questions exist about its life history. Specifically, the role of disturbance in establishment of seedlings and the significance of asexual reproduction in prohibiting expansion of the species' number and range are not understood. With so many questions remaining, particularly about reproductive success, and trends in abundance unknown, maintaining this species in Category 1 is not justified.

Conostegia hotteana is a small to medium sized tree known only from the island of Hispaniola and the eastern mountains of Puerto Rico. There is no current information on distribution or abundance of this plant and review of the file information indicates that classification as Category 1 was premature. Additional information on biological distribution and abundance, habitat needs, and threats to the species is needed before a proposal to list would be justified.

Descurainia torulosa (Wyoming tansymustard) is known only from the high volcanic mountains in northwest Wyoming and Pine Butte in southwest Wyoming. The species was removed from Category 1 status primarily because of taxonomic questions and the apparently large amount of suitable habitat that has not been searched for the species. *Descurainia torulosa* may in fact be a minor variant of the common *D. incana*. Successful searches for additional populations were conducted in the 1980's by various investigators, suggesting that additional searches in suitable habitat will yield more populations.

The short-nosed kangaroo rat (*Dipodomys nitratroides brevinasus*) is native to the lower foothills of the San Joaquin Valley, California. The species was deleted from Category 1 because threats to its existence, primarily destruction of habitat, will be alleviated by implementation of the San Joaquin Endangered Species Recovery Program. This program will include setting aside foothill habitat for species such as the San Joaquin kit fox and giant kangaroo rat and will provide *de facto* protection for the short-nosed kangaroo rat. Furthermore, review of the files regarding this species revealed no information on species abundance and distribution that would justify inclusion in Category 1.

The Summer Basin tui chub (*Gila bicolor* ssp.) is a subspecies of tui chub that had been restricted to the Summer Basin for the past 10,000 years. Most of the subspecies was eradicated by a toxaphene project conducted in the late 1950's, and only one population of pure Summer Basin tui chub was then known to survive. The subspecies was removed from Category 1 because additional populations were discovered and presumed threats from hybridization are less than originally believed. The subspecies is believed to be fairly secure.

Based on recommendations provided by the Arizona Plant Recovery Team in

1991, the Service removed *Macroptilium supinum* (= *Phaseolus supinus*) (supine bean) from Category 1. The present biological status of the species is unclear since new populations were discovered in Mexico in 1990. Additional information on abundance and distribution are needed to justify a proposal for listing.

Malpighia infestissima (stingingbush) is endemic to Buck Island and St. Croix, U.S. Virgin Islands. It was removed from Category 1 because its distribution and abundance are poorly known. On St. Croix, it is reported to be widespread and scattered. Other than general threats from residential, tourism, and industrial development, no direct threats to this species are known. The general lack of information on biological distribution and abundance, coupled with limited knowledge of threats, justifies removal from Category 1.

Peperomia megalopoda is a small herb endemic to Puerto Rico. The species was originally collected in 1929 and has not been observed since. Efforts to relocate the species at the type locality in 1991 were unsuccessful. It was removed from Category 1 because its continued existence is in doubt.

Psychilis kranzlinii (= *Encyclia kranzlinii*) is an orchid endemic to Puerto Rico. It is rare but found in a variety of habitats. The extent of its distribution and abundance is poorly known and currently available information on its status does not support a listing proposal.

The Tarahumara leopard frog (*Rana tarahumarae*) is known from 53 localities in southern Arizona as well as Sonora, Chihuahua, and Sinoloa, Mexico. Although extirpated from the five historic localities in Arizona, populations elsewhere appear to be thriving and healthy based on surveys conducted in the mid-1980's. Several members of the Tarahumara Frog Oversight Group concurred with the removal of this species from Category 1.

The Suisan ornate shrew (*Sorex ornatus sinuosus*) and the salt marsh wandering shrew (*Sorex vagrans halicoetes*) were historically found along streams, in grasslands and marshy areas of San Francisco Bay, California. Currently these species are more restricted to marshy areas of the Bay. Habitat for these shrews is strongly overlapped with that of two other listed species, the salt marsh harvest mouse (*Reithrodontomys raviventris*) and the California clapper rail (*Railus longirostris obsoletus*). Threats to the shrews will be alleviated by implementation of recovery plans for the salt marsh harvest mouse and the California clapper rail. The alleviation of threats to habitat supports removal of these subspecies from Category 1.

Review of file information on *Tillandsia baileyi* (Bailey's ballmoss) indicates that the placement of this species in Category 1 in 1990 was in error. Data to support inclusion in Category 1 are not on file. Although population estimates are not available, the species is estimated to occur in over 50,000 acres in south Texas, where its continued existence is believed secure.

The Service removed Doyen's Trigonoscuta dune weevil (*Trigonoscuta* sp.) from Category 1 primarily due to concerns about the taxonomy of this species. The taxonomy of the genus is unresolved and Doyen's dune weevil has not been formally described. The specific taxonomy is based solely on a single-page letter written by E.L. Sleeper. The last revisions to this genus described many species and subspecies based on conclusions that the Service questions.

The New Mexican jumping mouse (*Zapus hudsonius luteus*) occurs locally in the San Juan, Jemez, and Sacramento mountains and in the central-northern and central Rio Grande Valley. This species is already listed as a group 2 endangered species by the State of New Mexico, which means that permits are required for collecting the species. Populations were originally impacted by destruction of wetlands. However, the species has been recently found to occupy man-made habitats adjacent to irrigation drains and canals, thus alleviating the threat of habitat destruction. Dr. Joan Morrison, University of Florida, has raised concerns that the classification to Category 1 was premature. Subsequent review of the record supports her position and the species is now removed from Category 1.

Author

The primary author of this notice is Dr. Richard E. Sayers, Jr., Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Mailstop ARLSQ–452, Washington, D.C. 20240 (phone 703/358–2105; fascimile 703/358–1735).

Authority: The authority for this notice is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: June 27, 1995.

John G. Rogers

Acting Director, Fish and Wildlife Service.

[FR Doc. 95–16264 Filed 6–28–95; 1:20 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[I.D. 061695B]

Atlantic Swordfish Fisheries; Hearing Date Change

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

ACTION: Date change for public hearing.

SUMMARY: NMFS previously announced public hearings (60 FR 32484, June 22, 1995) to receive comments from fishery participants and other members of the public regarding proposed changes to the regulations and the Atlantic swordfish fishery. NMFS announces a change of meeting date for a previously announced swordfish public hearing.

DATES: The public hearing originally announced for June 30, 1995, in Manteo, N.C., has been changed to July 5, 1995.

ADDRESSES: Written comments should be sent to Richard B. Stone, Chief, Highly Migratory Species Management Division, Office of FisheriesConservation and Management (F/CM), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Clearly mark the outside of the envelope ''Atlantic Swordfish Comments.'' The public hearing will be held at the following location:

Manteo, NC

Wednesday, July 5, 1995, 6–9 p.m.

North Carolina State Aquarium
Airport Road
Manteo, NC 27954

FOR FURTHER INFORMATION CONTACT: Ronald G. Rinaldo, 301–713–2347 or fax, 301–713–0596.

SUPPLEMENTARY INFORMATION: This hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Richard B. Stone (see **ADDRESSES**) by June 30, 1995.

Dated: June 26, 1995.

Richard W. Surdi,

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

[FR Doc. 95–16132 Filed 6–27–95; 4:19 pm]

BILLING CODE 3510–22–F

50 CFR Part 677

[Docket No. 950615155–5155–01; I.D. 060695A]

RIN 0648–AI01

North Pacific Fisheries Research Plan; Crab Vessel Fee Exemption

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to exempt certain crab catcher vessels from the 1995 fee-collection program authorized pursuant to the North Pacific Fisheries Research Plan (Research Plan). This exemption would respond to a request from the State of Alaska to conform the Research Plan to a recent change in its crab observer coverage requirements for catcher vessels participating in the Dutch Harbor and Adak area king crab fisheries, and would avoid a ''double payment'' by the affected vessels of both Research Plan fees and costs of the State required direct observer coverage. This proposed rule is consistent with the intent of the final rule implementing the Research Plan and is intended to facilitate Federal/State cooperative implementation of the crab and groundfish observer programs during the first year of the fee-collection program authorized under the Research Plan.

DATES: Comments on this proposed rule must be received by July 12, 1995.

ADDRESSES: Comments on this proposed rule may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802–1668; Attn: Lori J. Gravel.

Copies of the Research Plan and the Environmental Assessment/Regulatory Impact Review prepared for the Research Plan may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Susan Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the Research Plan became effective October 6, 1994 (59 FR 46126, September 6, 1994). A regulatory amendment was published in the **Federal Register** on January 9, 1995 (60 FR 2344), which clarified 1995 observer coverage requirements and revised the definition of certain terms set out under § 677.2. The purpose for, and description of, the Research Plan are contained in the preamble to the final rule (59 FR 46126, September 6, 1994).

The Research Plan provides for the coordination of the crab observer program administered by the Alaska Department of Fish and Game (ADF&G) and the groundfish observer program administered by NMFS. Regulations implementing the Research Plan set out 1995 observer coverage requirements for the crab and groundfish fisheries (§ 677.10(a)).

The costs of implementing the Research Plan are financed by a fee assessment of either 2 percent of the exvessel value of all Research Plan fisheries or the actual costs of implementing the Research Plan, whichever is less (§ 677.11). Although the fee liability for a given amount of retained catch is divided equally between the processor and harvesting vessel, processors are responsible for collecting all fee assessments and for paying them bimonthly (§ 677.6(b)).

Regulations at § 677.6(b)(1) provide exemptions from fee assessments during 1995 for groundfish catcher vessels equal to or greater than 60 ft (18.3 m) length overall (LOA) and crab catcher vessels required to carry observers while participating in specified crab fisheries. This exemption is accomplished by reducing the processor's fee assessment for these vessels to one-half of the fee percentage established pursuant to § 677.11. These two sectors of the Research Plan fisheries were exempted, because they currently pay costs for observer coverage that are equal to or greater than amounts they would contribute under the 1995 Research Plan fee assessment program.

The 1995 observer coverage requirements for the king and Tanner crab fisheries of the Bering Sea and Aleutian Islands area are set out under § 677.10(a)(3). These requirements are intended to reflect existing ADF&G observer coverage requirements and to apply to all crab processor vessels and catcher vessels participating in specified crab fisheries.

In recent years, the number of processor vessels participating in the Adak and Dutch Harbor king crab fisheries has declined. At this time, the majority of the participating fleet is made up of catcher vessels, which currently are not required to carry observers. This has resulted in a loss of information necessary to manage the Adak and Dutch Harbor king crab stocks for sustained yield.

At its March 1995 meeting, the Alaska Board of Fisheries (Board) determined that additional observer coverage is needed for the catcher vessel fleet participating in these king crab fisheries. In addition to concerns about the reduced amount of observer data collected from the Dutch Harbor and Adak king crab fisheries, ADF&G staff also provided information that indicates that red king crab stocks in the Adak area are severely depressed and that the Adak fishery should not be opened unless adequate monitoring of the resource is provided through increased observer coverage on the catcher vessel fleet.

NMFS does not conduct crab surveys in the Adak and Dutch Harbor areas. Furthermore, crab resource assessments of these vast areas would be cost-prohibitive. The Board determined that observer coverage on all catcher vessels in the Adak and Dutch Harbor king crab fisheries, beginning with the September 1, 1995, opening of the brown king crab fishery, is the only means available to collect information sufficient to manage these stocks and allow a fishery. The Board requested the North Pacific Fishery Management Council (Council) to take action to incorporate this additional coverage under the Research Plan and exempt these vessels from 1995 Research Plan fee assessments to avoid a ''double payment'' of both Research Plan fees and the costs of State required direct observer coverage.

At its April 1995 meeting, the Council considered the Board's request, as well as testimony from ADF&G staff and persons representing the crab industry. The Council concurred with the Board's recommended action and requested NMFS to initiate rulemaking to revise 1995 crab observer coverage requirements set out under regulations implementing the Research Plan. The Council also requested NMFS to extend current provisions for exemption from the 1995 Research Plan fees (§ 677.6(b)(1)(iii)(B)) to include the above described fee exemptions for crab catcher vessels participating in the Adak and Dutch Harbor king crab fisheries.

Table 1 lists the number of vessels participating in the Dutch Harbor and Adak crab fisheries, the value of these fisheries and associated costs of increased observer coverage. The catcher vessels' portion of the 1995 fee based on value of retained catch would be 1 percent of the standard exvessel prices published in the final 1995 Research Plan specifications (59 FR 61556, December 1, 1994) multiplied by projected catch, or $220,000. The projected observer coverage cost for these catcher vessels is almost 300

percent of the anticipated fee amount, or $669,750.

TABLE 1.—TOTAL CATCH, STANDARD PRICE, VALUE, FEE

[1 percent of the value, observer days and cost for catcher vessels and catcher processor vessels participating in the Dutch Harbor and Adak king crab fisheries. Catcher vessel observer costs are based on an assumed cost per observer day equal to $235]

	Dutch Harbor brown king crab	Adak brown king crab	Adak red king crab
Total catch (lbs)	1,500,000	5,000,000	500,000
Standard price	$3/lb	$3/lb	$5/lb
Value	$4,500,000	$15,000,000	$2,500,000
1% of value	$45,000	$150,000	$25,000
No. processor vessels	0	3	3
No. catcher vessels (CVs)	15	25	15
CV observer days	900	1,500	450
CV observer cost	$211,500	$352,500	$105,750

Table 1 indicates that, if all of the catch in the Dutch Harbor and Adak king crab fisheries were taken by crab catcher vessels, exempting these vessels from the 1995 fee-collection program pursuant to the request of the Board would reduce fee collections by $220,000. In reality, catcher vessels would not take all of the catch, so the actual reduction in fees would be somewhat less than this value.

If the average catch per vessel is the same for catcher vessels and catcher processors, and if the projected numbers of catcher vessels and catcher processors are used to estimate the percent of catch that will be taken by catcher vessels, the catcher vessels would take about 91 percent of the catch, the fee exemption for these vessels would result in a $200,000 reduction in total fee liabilities, and the cost to catcher vessels for observer coverage as a percent of their standard exvessel value would be about 3.3 percent with the fee exemption or about 4.3 percent without the exemption. NMFS does not anticipate that a $200,000 reduction in 1995 fee liabilities would have a significant impact on the collection of sufficient funds necessary for full implementation of the Research Plan in the future.

Classification

The Assistant General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule would result in reduced costs to the 15 crab catcher vessels participating in the Adak and Dutch Harbor king crab fisheries. The reduced fee liability is expected to total about $200,000. As a result, a regulatory flexibility analysis was not prepared.

If this proposed action is adopted, it should be done as soon as possible, so that clear instructions may be sent out to the crab industry, which reflect the amended 1995 fee collection program authorized under the Research Plan. Delay in implementing the proposed fee exemption would result in payment of 1995 Research Plan fees, in addition to payment for observer coverage, by a sector of the crab catcher vessel fleet. Total costs could exceed 4 percent of the exvessel value of landed catch. This situation would constitute a ''double payment'' for observer services and is counter to the Council's intent for the 1995 fee collection program. NMFS is allowing an opportunity for public comment for a 15-day period to expedite final action, should NMFS approve it.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 677

Fisheries, Reporting and recordkeeping requirements.

Dated: June 26, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 677 is proposed to be amended as follows:

PART 677—NORTH PACIFIC FISHERIES RESEARCH PLAN

1. The authority citation for part 677 continues to read as follows:

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

2. In § 677.6, paragraph (b)(1)(iii)(A) is revised to read as follows:

§ 677.6 Research Plan fee.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(A) The round weight or round-weight equivalent of retained catch of red king crab or brown king crab harvested from ADF&G's Adak management area defined at 5 AAC 34.700, brown king crab harvested from ADF&G's Dutch Harbor management area defined at 5 AAC 34.600, *Chionoecetes tanneri* Tanner crab, *C. angulatus* Tanner crab, and *Lithodes cousei* king crab determined by the best available information received by the Regional Director since the last bimonthly billing period, multiplied by the standard exvessel price established pursuant to § 677.11 for the calendar year, multiplied by one-half the fee percentage established pursuant to § 677.11 for the calendar year; plus

* * * * *

3. In § 677.10, paragraph (a)(3) is revised to read as follows:

§ 677.10 General requirements.

(a) * * *

(3) *Requirements for vessel operators of Bering Sea and Aleutian Islands area king and Tanner crab.* An operator of a vessel that harvests or processes king or Tanner crab must have one or more State of Alaska-certified observers on board the vessel whenever king or Tanner crab are received, processed, or onboard the vessel in the Bering Sea and Aleutian Islands area if the operator is required to do so by Alaska State regulations at 5 AAC 34.035, 34.082, 35.082, or 39.645.

* * * * *

[FR Doc. 95–16094 Filed 6–27–95; 9:18 am]

BILLING CODE 3510–22–N

Notices

Federal Register

Vol. 60, No. 126

Friday, June 30, 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

Secretary of Agriculture's Special Cotton Quota Announcement Number 6

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 48,036,600 kilograms (105,902,662 pounds) is established in accordance with section 103B(a)(5)(F) of the Agricultural Act of 1949, as amended (1949 Act). This quota is established under Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Cotton Quota Announcement Number 6, chapter 99, subchapter III, subheading 9903.52.06 of the Harmonized Tariff Schedule (HTS).

DATES: The quota was established on May 17, 1995, and applies to upland cotton purchased not later than August 14, 1995 (90 days from the date the quota was established) and entered into the United States not later than November 12, 1995 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Consolidated Farm Service Agency, United States Department of Agriculture, room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1$^{3}/_{32}$ inch cotton, C.I.F. northern Europe, (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended May 11, 1995. The quota amount is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—January 1995 through March 1995. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: 7 U.S.C. 1444–2 (a) and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC on June 22, 1995.

Dan Glickman,

Secretary.

[FR Doc. 95–16190 Filed 6–29–95; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Quota Announcement Number 7

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 48,036,600 kilograms (105,902,662 pounds) is established in accordance with section 103B(a)(5)(F) of the Agricultural Act of 1949, as amended (1949 Act). This quota is established under Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Cotton Quota Announcement Number 7, chapter 99, subchapter III, subheading 9903.52.07 of the Harmonized Tariff Schedule (HTS).

DATES: The quota was established on May 24, 1995, and applies to upland cotton purchased not later than August 21, 1995 (90 days from the date the quota was established) and entered into the United States not later than November 19, 1995 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Consolidated Farm Service Agency, United States Department of Agriculture, room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1$^{3}/_{32}$ inch cotton, C.I.F. northern Europe, (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended May 18, 1995. The quota amount is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—January 1995 through March 1995. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: 7 U.S.C. 1444–2 (a) and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC, on June 22, 1995.

Dan Glickman,

Secretary.

[FR Doc. 95–16191 Filed 6–29–95; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Quota Announcement Number 8

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 47,517,705 kilograms (104,758,692 pounds) is established in accordance with section 103B(a)(5)(F) of the Agricultural Act of 1949, as amended (1949 Act). This quota is established under Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Cotton Quota Announcement Number 8, chapter 99, subchapter III, subheading 9903.52.08 of the Harmonized Tariff Schedule (HTS).

DATES: The quota was established on May 31, 1995, and applies to upland cotton purchased not later than August 28, 1995 (90 days from the date the quota was established) and entered into the United States not later than November 26, 1995 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Consolidated Farm Service Agency, United States Department of Agriculture, room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe, (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended May 25, 1995. The quota amount is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—February 1995 through April 1995. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: 7 U.S.C. 1444–2(a) and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC on June 22, 1995.

Dan Glickman,

Secretary.

[FR Doc. 95–16192 Filed 6–29–95; 8:45 am]

BILLING CODE 3410–05–P

Consolidated Farm Service Agency

RIN 0560–AE34

1995–1996 Marketing Year Penalty Rates for All Kinds of Tobacco Subject to Quotas

AGENCY: Consolidated Farm Service Agency, USDA.

ACTION: Notice of Determination.

SUMMARY: This notice sets forth the determination of the 1995–1996 marketing year penalty rate for excess tobacco for all kinds of tobacco subject to marketing quotas. In accordance with section 314 of the Agricultural Adjustment Act of 1938 as amended (the 1938 Act), marketing quotas for a kind of tobacco are assessed at the rate of 75 percent of the average market price for that kind of tobacco for the immediately preceding marketing year.

EFFECTIVE DATE: June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Joe Lewis, Jr., Tobacco and Peanuts Division, Consolidated Farm Service Agency (CFSA), United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013–2415, telephone (202) 720–0795.

SUPPLEMENTARY INFORMATION:

Executive Order 12886

This action has been determined to be not-significant for purposes of Executive Order 12886 and therefore has not been reviewed by the Office of Management and Budget.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the CFSA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published a 48 FR 29115 (June 24, 1983).

Executive Order 12778

Executive Order 12778 is not applicable to this notice.

Discussion

Section 314 of the 1938 Act, provides that the rate of penalty per pound for a kind of tobacco that is subject to marketing quotas shall be 75 percent of the average market price for such tobacco for the immediately preceding marketing year.

For all kinds of tobacco subject to marketing quotas, except Puerto Rico (type 46) tobacco, the Agricultural Statistics Board, National Agricultural Statistical Service, United States Department of Agriculture determines and announces annually the average market prices for each type of tobacco. The penalty rates are determined on the basis of this information.

The national marketing quota for Puerto Rico (type 46) tobacco for the immediately preceding marketing year was ''0'' pounds. There is no record of any such tobacco being marketed. Consequently, the penalty rate for the 1995–1996 marketing year cannot be determined based on 75 percent of the average marketing price for the immediately preceding year. Therefore, the penalty rate for Puerto Rico (type 46) tobacco for the 1995–1996 marketing year shall be the same as the penalty rate determined for the 1989–1990 marketing year, the last year in which marketing information is available.

Since the determination of the 1995–1996 marketing year rates of penalty reflect only mathematical computations which are required to be made in accordance with a statutory formula, it has been determined that no further public rulemaking is required.

Determination

Accordingly, it is determined the 1995–1996 marketing year rates of penalty for all kinds of tobacco subject to marketing quotas are as follows:

RATE OF PENALTY

[1995–1996 Marketing Year]

Kinds of tobacco	Cents per pound
Flue-Cured	1.27
Burley	1.38
Fire-Cured (Type 21)	1.21
Fired-Cured (Types 22 and 23)	1.57
Dark Air-Cured (Types 35 and 36)	1.27
Virginia Sun-Cured (Type 37)	1.11
Cigar Filler and Binder (Types 42, 43, 44, 54, and 55	I.09
Puerto Rico Cigar-Filler (Type 46)	.57

Signed at Washington, D.C., on June 26, 1995.

Bruce R. Weber,

Acting Administrator, Consolidated Farm Service Agency.

[FR Doc. 95–16078 Filed 6–29–95; 8:45 am]

BILLING CODE 3410–05–P

Forest Service

Wildcat River Advisory Commission

AGENCY: Forest Service, USDA .

ACTION: Notice of meeting.

SUMMARY: The Wildcat River Advisory Commission will meet at the Jackson Town Hall in Jackson, New Hampshire, on August 2, 1995. The purpose of the meeting is to continue with the development of a Draft River Management Plan for administration of the designated Wild and Scenic Wildcat River. The Wild and Scenic Rivers Act requires the establishment of an advisory commission to advise the Secretary of Agriculture on administration of the river. The public is encouraged to attend the meeting and may provide written comment on the plan to the commissions c/o the district office.

DATES: The meeting will be held August 2, 1995, at 7:30 p.m.

ADDRESSES: The meeting will be held at the Jackson Town Hall, Route 16B, Jackson, New Hampshire.

Send written comments to David Pratt III, Saco Ranger District, White Mountain National Forest, 33 Kancamagus Highway, Conway, NH 03818.

FOR FURTHER INFORMATION CONTACT: David Pratt III, Saco Ranger District, (603) 447–5448.

Dated: June 22, 1995.

John R. Schultz,

Acting Forest Supervisor.

[FR Doc. 95–16118 Filed 6–29–95; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Opportunity to Comment on the Applicant for the Cairo (IL) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA requests comments on the applicant for designation to provide official services in the geographic area currently assigned to Cairo Grain Inspection Service, Inc. (Cairo).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by July 31, 1995.

ADDRESSES: Comments must be submitted in writing to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36JHART]. ATTMAIL and FTS2000MAIL users may respond to !A36JHART. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the April 21, 1995, **Federal Register** (60 FR 19881), GIPSA asked persons interested in providing official services in the geographic area assigned to Cairo to submit an application for designation. Cairo, the only applicant, applied for designation to provide official inspection services in the entire area currently assigned to them.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning Cairo. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of Cairo. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicant written notification of the decision.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: June 22, 1995

Neil E. Porter

Director, Compliance Division

[FR Doc. 95–15863 Filed 6–29–95; 8:45 am]

BILLING CODE 3410–EN–F

Designation for the Eastern Iowa Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa), to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATES: August 1, 1995.

ADDRESSES: Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Janet M Hart, telephone 202–720–8525

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the January 31, 1995, **Federal Register** (60 FR 5897), GIPSA asked persons interested in providing official services in the geographic area assigned to Eastern Iowa to submit an application for designation. Applications were due by February 28, 1995. Eastern Iowa, the only applicant, applied for designation in the entire area they are currently assigned.

GIPSA requested comments on the applicant in the March 31, 1995, **Federal Register** (60 FR 16602). Comments were due by May 1, 1995. GIPSA received no comments by the deadline.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Eastern Iowa is able to provide official services in the geographic area for which they applied. Effective August 1, 1995, and ending July 31, 1998, Eastern Iowa is designated to provide official inspection services in the geographic area specified in the January 31, 1995, **Federal Register**.

Interested persons may obtain official services by contacting Eastern Iowa at 319–322–7140.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: June 22, 1995

Neil E. Porter

Director, Compliance Division

[FR Doc. 95–15864 Filed 6–29–95; 8:45 am]

BILLING CODE 3410–EN–F

Posting of Stockyards

Pursuant to the authority provided under Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below are stockyards as defined by Section 302(a). Notice was given to the stockyard owners and to the public as required by Section 302(b), by posting notices at the stockyards on the dates specified below, that the stockyards are subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

Facility No., name, and location of stockyard		Date of posting
NY–171	Town & Country Auction Services Schuylerville, New York	September 10, 1993.
PA–156	Mel's Stable New Holland, Pennsylvania	December 2, 1992.
VT–112	Northeast Kingdom Sales, Inc. Barton, Vermont	February 16, 1995.

Done at Washington, D.C. this 22nd day of June 1995

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 95–16193 Filed 6–29–95; 8:45 am]

BILLING CODE 3410–KD–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062095C]

Marine Mammals

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

ACTION: Issuance of scientific research permit no. 965 (P66J).

SUMMARY: Notice is hereby given that the Alaska Department of Fish and Game (principal investigator: Donald Calkins), 333 Raspberry Road, Anchorage, AK 99518–1599, has been issued a permit to take Steller sea lions (*Eumetopias jubatus*) and California sea lions (*Zalophus californianus*) for the purpose of scientific research.

ADDRESSES: The permit and related documents are available for review by interested persons in the following offices by appointment:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802–1668 (907/586–7221); and

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA, 90802–4213 (310/980–4001).

FOR FURTHER INFORMATION CONTACT: Kellie M. Foster (301/713–1401) or Ruth Johnson (301/713–2289).

SUPPLEMENTARY INFORMATION: On April 21, 1995, notice was published in the **Federal Register** (60 FR 19888) that a permit had been requested by the above-named organization. The requested permit has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Species (50 CFR part 222).

The permit authorized the holder to take a maximum of 125 Steller sea lions (*Eumetopias jubatus*) by trapping, darting, sampling, and gas anesthesia (including a maximum of 20 by recapture for follow-up blood sampling and removal of instruments); a maximum of 400 Steller pups over 6 months old by hand capture, gas anesthesia, and marking; a maximum of 10,000 Stellers by harassment during the course of capturing suitable animals; a maximum of 15 Stellers by unintentional mortality during the course of capture and chemical immobilization and salvaged specimens of stranded animals, premature pups, and mortalities associated with this and other research activities. The applicant is also authorized to take up to 30 rehabilitated California sea lions (*Zalophus californianus*) by injection with experimental immobilization drugs and a maximum of 3 for unintentional mortality. All takes will be over a 5-year period. The objectives of the research are to: (1) Develop a consistent, safe, and reliable chemical restraint and anesthesia protocol for various age classes and sexes of Steller sea lions using California sea lions; (2) determine the differences between movements, feeding patterns, diving behavior, habitat use, and patterns of the eastern and western stocks to better understand the significance of interactions between Steller sea lions and commercial fisheries; (3) determine the differences of condition indices, the prevalence of disease agents, and the levels of pollutants found in tissues between the eastern and western stocks; (4) determine dispersal area and extent of mixing of eastern and western stock pups; and (5) develop and test a safe and reliable winter capturing method for sea lions.

Issuance of this permit, as required by the Endangered Species Act of 1973, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act.

Dated: June 20, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–16095 Filed 6–29–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 062295A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Groundfish Management Team will hold a public meeting.

DATES: The meeting will be held on July 17 beginning at 10:00 a.m. and may go into the evening until business for the day is completed, and on July 18 from 8:00 a.m. until 5:00 p.m.

ADDRESSES: The meeting will be held at the NMFS Alaska Fisheries Science Center, 7600 Sand Point Way NE, Room 2079, Building 4, Seattle, WA.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting is to review the draft stock assessments and assignments arising from the June 26–29, 1995, Council meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Sailer at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: June 26, 1995.

Richard W. Surdi,

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

[FR Doc. 95–16189 Filed 6–29–95; 8:45 am]

BILLING CODE 3510–22–F

United States Travel and Tourism Administration

Travel and Tourism Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) an amended notice is hereby given that the meeting of the Travel and Tourism Advisory Board of the U.S. Department of Commerce will take place on July 13, 1995, at The Phoenician in Phoenix, Arizona from 2 pm to 5:30 pm.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the International Travel Act, as amended, and provide guidance to the Under Secretary for Travel and Tourism.

Agenda items are as follows:

I. Call to Order
II. Roll Call
III. Administrative Details
IV. Current Legislative Issues
V. White House Conference on Travel & Tourism
VI. Miscellaneous
IX. Adjournment

A very limited number of seats will be available to observers from the public and the press. To assure adequate seating, individuals intending to attend should notify the Committee Control Officer in advance. The public will be permitted to file written statements with the Committee before or after the public forum and meeting. To the extent time is available, the presentation of oral statements will be allowed.

Jay E. Stewart, Committee Control Officer, United States Travel and Tourism Administration, Room 1513, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202–501–6985) will respond to public requests for information about the meeting.

Greg Farmer,

Under Secretary for Travel and Tourism.

[FR Doc. 95–16169 Filed 6–29–95; 8:45 am]

BILLING CODE 3510–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Delections

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Addition to and deletions from the Procurement list.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: July 31, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 10, 24, April 28 and May 12, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 FR 13123, 15535, 20971 and 25695) of proposed addition to and deletions from the Procurement List.

Addition

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Shower Pail, Collapsible
8465–00–935–6649

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletions:

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48d) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Seal, Metal Band
P.S. Item #0816–A
P.S. Item #0816–B
Handle, Step
5340–01–114–7387
Chest, Tool
7310–00–310–8544
Cocoa Beverage Powder
8960–01–276–4207
8960–01–323–9627

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–16171 Filed 6–29–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 31, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will result in authorizing small entities to furnish the commodities and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Pad, Isopropyl Alcohol Impregnated
6510–00–786–3736
NPA: El Paso Lighthouse for the Blind, El Paso, Texas

Fastener, Paper
7510–00–205–0806
7510–00–235–6046
7510–00–235–6049
7510–00–235–6068
7510–00–244–1169
7510–00–455–7339
NPA: Delaware County Chapter, NYSARC, Walton, New York

Paper, Bond & Writing
7530–00–290–0599
7530–00–290–0600
7530–00–290–0617
7530–00–290–0618
NPA: Louisiana Association for the Blind, Shreveport, Louisiana

Service

Food Service, U.S. Coast Guard Island, Building 54A, Alameda, California
NPA: Calidad Industries, Inc., Oakland, California

Beverly L. Milkman,

Executive Director

[FR Doc. 95–16172 Filed 6–29–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 31, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Towel, Paper
8540–00–291–0392
NPA: Royal Maid Association for the Blind, Inc. Hazlehurst, Mississippi

Services

Janitorial/Custodial, Department of Veterans Affairs Medical Center 7305 N. Military Trail, West Palm Beach, Florida
NPA: Gulfstream Goodwill Industries, Inc. West Palm Beach, Florida

Janitorial/Custodial, Shaw Air Force Base, South Carolina,
NPA: Santee-Wateree Community Health Center, Sumter, South Carolina

Janitorial/Custodial,
Federal Building 200 4th Street SW, Huron, South Dakota
NPA: Huron Area Adjustment Training Center Huron, South Dakota

Janitorial/Custodial, Fort Buchanan, Puerto Rico
NPA: Brevard Achievement Center, Inc., Rockledge, Florida

Laundry Service, Naval Medical Clinic, Everett, Washington
NPA: Northwest Center for the Retarded Seattle, Washington

Switchboard Operation, Department of Veterans Affairs Medical Center, 801 South Marion Street, Lake City, Florida
NPA: CARC—Advocates for Citizens with Disabilities, Lake City, Florida

Switchboard Operation, Department of Veterans Affairs Outpatient Clinic, Beaumont, Texas

NPA: The Lighthouse of Houston, Houston, Texas
Switchboard Operation, Department of Veterans Affairs Outpatient Clinic, Lufkin, Texas
NPA: The Lighthouse of Houston, Houston, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–16173 Filed 6–29–95; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of the Navy

Intent To Grant Partially Exclusive Patent License; Davis Liquid Crystals, Inc.

The Department of the Navy hereby gives notice of its intent to grant to Davis Liquid Crystals, Inc., a revocable, nonassignable, partially exclusive license in the United States to practice the Government owned invention described in U.S. Patent Application Serial No. 08/097,802 ''Reversible Thermochromic Pigments,'' filed 27 July 1993.

Anyone wishing to object to the grant to this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR OOCC, Ballston Tower One, Arlington, Virginia 22217–5660.

For further information contact: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: June 9, 1995.

L. R. McNees,

LCDR, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 95–16131 Filed 6–29–95; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995. The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act of 1995, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (7) Affected public; (8) An estimate of the number of respondents per report period; (9) An estimate of the number of responses per respondent annually; (10) An estimate of the average hours per response; (11) The estimated total annual respondent burden; and (12) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before July 31, 1995. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION: Requests for additional information or copies of the forms and instructions should be directed to Norma White, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Ms. White may be telephoned at (202) 254–5327.

SUPPLEMENTARY INFORMATION: The first energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA–800–804, 807, 810–814, 816–817, 819M, 819A, 820 and 825.
3. 1905–0165.
4. Petroleum Supply Reporting System.
5. Extension.
6. Mandatory.
7. Business or other for profit; Federal Government; State, Local or Tribal Government.
8. 3,506 respondents.
9. 15.18 responses.
10. 1.14 hours per response.
11. 60,680 hours.
12. The Petroleum Supply Reporting System collects information for determining the supply and disposition of crude petroleum, petroleum products and natural gas liquids. These data are published by the EIA. Respondents are operators of petroleum refining facilities, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, tankers and barges and oil importers.

The second energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA–63A/B.
3. 1905–0292.
4. Annual Solar Thermal Collector Manufacturers Survey and Annual Photovoltaic Module Manufacturers Survey.
5. Extension.
6. Mandatory.
7. Business or other for profit.
8. 130 respondents.
9. 1 response.
10. 3 hours per response.
11. 390 hours.
12. The surveys will collect data about the solar energy industry, e.g, which companies are manufacturing collectors, the type of collectors being manufactured, the quantity, use, and change in the industry. Data will be published. Respondents are manufacturers, importers, and exporters of solar thermal collectors and companies manufacturing photovoltaic cells and modules.

The third energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–8.
3. 1902–0026.
4. Underground Gas Storage Report.
5. Extension.
6. Mandatory.
7. Business or other for profit.
8. 36 respondents.
9. 12 responses.
10. 3 hours per response.
11. 1,296 hours.
12. Data are used by the Commission in analyzing the total amount of storage gas to assure the continuity of natural gas service. The data are analyzed with

regard to natural gas storage injections, withdrawals, balances and reservoir capacities to assure stored natural gas is adequate.

Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, D.C., June 26, 1995.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 95–16135 Filed 6–29–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Proposed Revisions, Extension of Forms and Solicitation of Comments.

AGENCY: Energy Information Administration, Department of Energy.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed revision and a three-year extension of approval for its electric power forms. These forms include: Form EIA–412, ''Annual Report of Public Electric Utilities;'' Form EIA–759, ''Monthly Power Plant Report;'' Form EIA–826, ''Monthly Electric Utility Sales and Revenue Report with State Distributions;'' Form EIA–860, ''Annual Electric Generator Report;'' Form EIA–861, ''Annual Electric Utility Report;'' and Form EIA–867 ''Annual Nonutility Power Producer Report.''

DATES: Written comments must be submitted on or before August 29, 1995. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to John G. Colligan (EI–524), Energy Information Administration, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585, Telephone (202) 254–5465, fax (202) 254–6233, Internet e-mail jcolliga@EIA.DOE.GOV.

FOR FURTHER INFORMATION: Requests for additional information or copies of the form(s) and instructions should be directed to John Colligan at the address listed previously.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the EIA is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resources, reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near-term and long-term future for the Nation's economic and social needs. To meet this responsibility, as well as internal DOE requirements that are dependent on accurate data, the EIA conducts statistical surveys that encompass each significant source of electric power, distribution and consumption activity in the United States.

As part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995), EIA conducts a pre-survey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program ensures that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

II. Current Actions

The EIA proposes the following changes and improvements:

—deleting data items no longer required;
—adding data items needed for analysis;
—improving the clarity of the instructions;
improving the design and flow of the forms;
—merging two forms (Form EIA–861 and Form EIA–867);
—dropping confidentiality requirement (Form EIA–867);
—electronic filing (EIA–412);
—appointment of an agent for filing; and
—changing the due date for the annual forms (Forms EIA–412, 861, and 867) from prior due dates to April 1st of each year. (The Form EIA–860 will continue to be due February 15th each year.)

EIA proposes a three-year extension with changes to its existing collections. These changes reflect current industry operations and enable EIA to respond accurately to industry, Congressional, Federal and public data users requirements. The proposed changes are summarized below:

1. Form EIA–412

The EIA proposes the following:

a. In the ''Identification Section'' page one of the form, request the fax number and/or Internet e-mail address of the respondent contact person.

b. Schedule I: *Electric Utility Balance Sheet* separate ''Plant Materials and Operating Supplies'' (account 154) from the existing ''Materials and Supplies'' (accounts 153–163) and rename the remaining items as ''Other Supplies'' (account 153, 155–163).

c. Schedule III: *Statement of Cash Flows,* a new schedule will be required from the publicly owned electric utilities (existing schedules III through XII will be renumbered). The data collected on this schedule will provide policy and decisionmakers with data comparable to the investor-owned electric utilities. The new schedule will provide a uniform reporting layout and facilitate easier public use of the data. Additionally it will make reconciliation of net income to cash flow less difficult.

d. The instructions have been revised adding clarity and uniformity thus aiding the respondents in the completion and timely submission of the form.

e. In order to minimize the overall burden, reduce reporting errors and overall costs, all respondents will be required to submit the Form EIA–412 electronically. Requests for submission in hard copy format rather than electronic filing must be made in writing and will be considered on a case-by-case basis. All submissions should be made on or before April 1st of each year.

The Form EIA–412 electronic format is described below:

—The EIA will mail a 3.5-inch diskette by January 15, 1996, (thereafter 2 months following the end of the fiscal year with a filing date 4 months after the end of the fiscal year) containing the respondent's form and operative software for electronic media;

—The Form EIA–412 software operates in a PC-based user friendly environment;

—The software operates using DOS 3.3 or higher, and a Hewlett Packard Laser Jet Series II, III, or IV (or compatible) printer;

—Software integrity should be maintained; therefore, no inserts or deletions to accounts, columns, lines, etc., should be made;

—No format changes to the prescribed schedules should be made;

—A signed hard copy of page one, ''Identification Section and Certification

Section,'' should be filed with each diskette;

—Resubmissions (of any part of the form) should include the entire Form EIA–412 diskette and signed hard copy certification;

—The software supports data entry onto screens that are identical to each schedule of the form;

—The system performs some edit checks as the data are entered and additional edits are provided to a respondent using the software;

—The software supports printing of a single page, or a series of pages with/without data, or copying to a diskette for filing with the EIA;

—There are no license restrictions on the number of copies to be installed by any one respondent; and

—The software is scheduled to be available in October 1995 and any respondent desiring to test the system should contact Roger Sacquety at (202) 254–5440.

Form EIA–759

The EIA is currently evaluating a proposal to revise the scope of its monthly data collection on the Form EIA–759, ''Monthly Power Plant Report.'' The proposal consists of two alternatives described in a **Federal Register** notice published April 28, 1995 (60 FR 20985) that would allow for the collection of data on net generation, fuel consumption, and end-of-month fuels stocks from both electric utilities and nonutility power producers.

Alternative one: Collect monthly electric power data electronically from the 150 U.S. electric control areas. The control area operators gather information for the electric power industry (both electric utilities and independent power producers) in the United States. Adoption of this alternative would greatly reduce monthly respondent burden. The EIA would continue to use the Form EIA–759 until electric control area operators are filing monthly and the data have been validated for consistency.

Alternative two: Revise the coverage of the current Form EIA–759 and sample both utility and nonutility power producers. With the second alternative, nonutilities included in the sample would receive a monthly form to report generation provided to the electric grid, as well as, consumption and stocks of fuel. Implementation of this option would also reduce respondent burden, but not as much as in alternative one.

The alternative selected will be announced in the **Federal Register** notice submitted to the Office of Management and Budget for clearance of the EIA Electric Power Program Package.

3. Form EIA–826

The EIA proposes the following changes:

a. include purchases of electricity by utilities from nonutilities at the utility/state level.

b. delete Schedule II, ''Electric Energy Information by Company.'' The data collected on Schedule II are used by the U.S. Department of Commerce, Bureau of Economic Analysis and are not used or published by EIA.

4. Form EIA–860

In order to remove duplicative reporting to both the EIA and the North American Electric Reliability Council (NERC) and reduce respondent burden, EIA proposes to change the method of data collection, revise some data elements, and clarify the instructions on the Form EIA–860 as follows:

a. Respondents will have the option to file the Form EIA–860 directly to EIA (the present method) or designate an agent(s) to file the form on their behalf;

b. Utilities can designate NERC as their agent. NERC will process the data filed on Form EIA–860 and deliver the generator data base to EIA annually;

c. Data reported will be ''as of January 1st'' of the reporting calendar year instead of ''as of December 31st'' of the year preceding the reporting calendar year, where the reporting calendar year is the year in which the report is filed;

d. Schedule II: Power Plant Site Information, Elevation and Cooling system codes (type of cooling) have been deleted. The term ''Nonutility Use'' is being changed to ''Cogeneration'' to more accurately describe the data being collected;

e. Schedule III: Generator Information, data terms (elements) have been deleted, added, and replaced as noted below:

—Deleted are: Service Type, First Electricity Date (existing generators), Start-up Fuels, (Third) Energy Source, Reasons for Delay/Cancellation, and Date of Cancellation;

—The more appropriate term, ''Effective Date,'' replaced ''First Electricity Date'' to collect the same data related to proposed new generators and proposed changes to existing generators;

—Added data elements are: ''Mode of Transportation of Fuels'' and ''Ownership of Generator.''

f. Instructions have been revised as follows:

—Report multiple-proposed generator changes for the 10-year forecast period;

—Added instructions to allow grouping by prime mover and energy source generators with nameplate capacity of less than 5 megawatts, provided aggregate capacity does not exceed 100 megawatts;

—Two codes are added to the choices for prime mover;

—Added a code to generically report future capacity plans without specific details, the other code facilitates the identification of ''common-headered'' steam generators;

—Five codes are added to expand the choices for reporting energy source; and

—Nine codes are either added, deleted and/or changed to improve the reporting status of planned new generators and/or changes to existing generators.

g. Schedule IV: Ownership of Generators Owned Jointly or by Others, the requirement to report leased generators, is deleted.

5. Form EIA–861

EIA proposes the following changes:

a. Consolidate the Form EIA–861 and the Form EIA–867, creating new Form EIA–899, ''Annual Electric Power Industry Report.'' Please refer to proposed Form EIA–899.

6. Form EIA–867

EIA proposes the following changes:

a. Consolidate the Form EIA–867 and the Form EIA–861, creating new Form EIA–899, ''Annual Electric Power Industry Report.'' Please refer to proposed Form EIA–899.

7. Proposed Form EIA–899

EIA proposes the creation of Form EIA–899:

a. Schedule I of Form EIA–899 is a modification of Schedule I of the Forms EIA–861 and EIA–867. This consolidated Schedule will collect the information common to both forms as follows: Identification, Certification, and Industry Classification. The Industry Classification section will determine the applicable schedules to be filed by each respondent. Added to Schedule I is the industry classification, ''Power Marketers,'' and the respondent's e-mail address.

b. Prior Form EIA–861: All remaining schedules are intact and became part of the Form EIA–899 with the following modifications:

—Schedule II: General Information, Peak Demand, Energy Sources and Disposition,—added a line for Transmission by Others Losses;

—Schedule III: Electric Operating Revenue,—modified the instructions to clarify the treatment of taxes;

—Schedule IV: Electric Energy Information on Sales to Ultimate Consumers by State or U.S. Territory,—added sectors for transportation and agriculture;

—Schedule V: Demand-Side Management Information,—added a DSM contact person and telephone number; and

—Schedule VI: Nonutility Power Producer Information,—revised the title to ''Independent Power Producer Information,'' and changed the reporting requirements to include all independent power producers.

c. Prior Form EIA–867: All remaining Schedules have been renumbered, are intact and became part of the Form EIA–899.

—The Standard Industrial Classification (SIC) Code designations are included in the instructions, the list of SIC codes has been enhanced to include sub-codes for SIC code 49 and include codes for SIC codes 91 and 97.

—The Form EIA–899 filing date is April 1st; and

—The Form EIA–899 collects information on electric generation including purchases and sales, electric capacity, and fuel consumption and will not be considered confidential. Data filed on the former Form EIA–867 have historically been treated as confidential. The EIA proposes that the data filed by all respondents in the electric power industry be considered public information consistent with similar data filed by other segments of the electric power industry on other EIA electric power forms. In addition, the industry is under a changing regulatory environment. Core data, as collected and published by the EIA, are needed by policy makers to develop regulations, and assess the impact of policies and regulations.

d. There is an option to file the Form EIA–899 electronically. The electronic filing option should reduce overall costs of the respondent and the government.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses. Please indicate to which form or forms your comment or comments apply.

General Issues: EIA is interested in receiving comments from persons regarding:

A. Whether the proposed collection(s) of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility and

B. What enhancements EIA can make to the quality, utility, and clarity of the information to be collected.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instruction(s) require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. For each of the following forms, public reporting burden (hours per response) is estimated to average: EIA–412 = 33.2 hrs.; EIA–759 = 1.4 hrs.; EIA–826 = 1.8 hrs.; EIA–860 = 16.0 hrs.; EIA–899 total 9.35 hrs: (Utility Power Producers = 7.08 hrs.; and Nonutility Power Producers 2.27 hrs.) Burden is based on how much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please comment on (1) the accuracy of our estimate and (2) efforts to minimize the burden of the collection of information through the use of automated collection techniques or other forms of information technology.

E. What is the estimated cost to complete the form, including direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. Please provide comments on the proposed change in confidentiality, and include specific reasons on how the release of specified data would likely cause substantial competitive harm to your company. If you have provided this information in response to the request for comments to the **Federal Register** notice published April 28, 1995 (60 FR 20985), there is no need to resubmit the information. Kindly advise us of the date of your submission, and we will include it in our comments.

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

D. For the most part, information is published by EIA in U.S. customary units, e.g., cubic feet of natural gas, short tons of coal, and barrels of oil. Would you prefer to see EIA publish more information in metric units, e.g., cubic meters, metric tons, and kilograms? If yes, please specify what information, the metric unit(s) of measurement preferred, and in which EIA publication(s) you would like to see such information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the forms. They also will become a matter of public record.

Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., June 21, 1995.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 95–16136 Filed 6–29–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP95–531–000]

Columbia Gas Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed 1995 Line L Replacement Project and Request for Comments on Environmental Issues

June 26, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) and operation of the facilities proposed in the 1995 Line L Replacement Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is required and whether or not to approve the project.

Summary of the Proposed Project

Columbia Gas Transmission Corporation (Columbia) wants to construct and operate 5.8 miles of pipeline replacement to provide continued service to its existing customers. Columbia's proposed facilities would consist of 5.8 miles of 16-inch-diameter pipeline and appurtenances in 9 sections that replaces approximately 0.5 mile of 12-inch and 5.2 miles of 16-inch-diameter pipeline on Line L in Ashland, Medina, and Wayne Counties, Ohio.

The locations of these facilities are shown in appendix 1.[2]

[1] Columbia Gas Transmission Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are

Continued

Land Requirements for Construction

Construction of the proposed facilities would require about 116 acres of land consisting of 35 acres of existing right-of-way (ROW), 60 acres of temporary ROW and staging areas, 18 acres of new permanent ROW, and a 3-acre contractor's yard. Following construction, the ROW would be restored and the temporary ROW would be allowed to revert to its former land use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that *could* occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Land use.
- Cultural resources.
- Hazardous waste.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Columbia. Keep in mind that this is a preliminary list; the list of issues will be added to, subtracted from, or changed based on your comments and our own analysis. Issues are:

- Twelve wetlands (palustrine/emergent and palustrine forested) and 6 intermittent streams at 9 locations would be affected.
- There is one residence and one business located within 50 feet of the construction ROW.
- There are trees in the project area that may be suitable habitat for the Indiana Bat, a federally listed endangered species.

Public Participation

You can make a difference by sending a letter with your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 835 North Capitol St., NE., Washington, DC 20426;
- Reference Docket No. CP95–531–000;
- Send a copy of your letter to: Mr. John Wisniewski, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before July 31, 1995.

If you wish to receive a copy of the EA, you should request one from Mr. Wisniewski at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for later intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. John Wisniewski, EA Project Manager, at (202) 208–1073.

Lois D. Cashell,

Secretary.

[FR Doc. 95–16098 Filed 6–29–95; 8:45 am]

BILLING CODE 6717–01–M

available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[Docket No. CP95–569–000]

Natural Gas Pipeline Company of America; Notice of Application

June 26, 1995.

Take notice that on June 19, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–569–000 an application pursuant to Section 7(b) of the Natural Gas Act, requesting permission and approval to abandon the transportation authority that Natural secured in Docket No. CP79–71, to provide service for ANR Pipeline Company (ANR), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that pursuant to a gas transportation agreement with ANR dated September 18, 1978 and Natural's Rate Schedule X–108, that Natural was obligated to redeliver equivalent volumes of natural gas to ANR. Specifically, Natural agreed to accept producer delivered volumes of up to 1,000 Mcf per day for the first three years and up to 700 Mcf per day thereafter in West Cameron Block 181 for redelivery to ANR near Lake Arthur

in Cameron Parish, Louisiana (via Natural's capacity on the system of Stingray Pipeline Company).

It is further stated that by letter agreement dated March 13, 1995, Natural and ANR agreed to terminate the transportation that Natural was obligated to perform for ANR.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 17, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–16101 Filed 6–29–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–258–000 et al.]

Mojave Pipeline Company; Notice of Availability of the Final Environmental Impact Statement for the Proposed Mojave Northward Expansion Project

June 26, 1995.

The staffs of the Federal Energy Regulatory Commission (FERC) and California State Lands Commission (SLC) have prepared this final environmental impact report/environmental impact statement (EIR/EIS) on the natural gas pipeline facilities proposed by Mojave Pipeline Company (Mojave) in the above dockets.

The EIR/EIS was prepared under the direction of the FERC and SLC staffs to satisfy the requirements of the National Environmental Policy Act and the California Environmental Quality Act. The staffs of the FERC and SLC conclude that approval of the proposed project, with appropriate mitigation measures and receipt of necessary permits and approvals, has the potential to significantly impact the environment. The final EIR/EIS evaluates alternatives to Mojave's proposal.

The FERC and SLC staffs assessed the potential environmental effects of the construction and operation of the proposed Mojave Northward Expansion Project, which consists of between 585 and 637 miles of pipeline, depending on final project configuration, including the following facilities:

- A North Mainline about 240 miles long from near Bakersfield northward to Martinez.
- A Sacramento Mainline about 63 miles long from Ripon to southwest Sacramento.
- Shorter segments, which may include segments to Lindsay, Famoso, Coalinga, Kingsburg, Sanger, Livingston, Turlock, Ceres, Modesto, Tracy, Antioch, Fremont, McFarland, Malaga, Madera, Fairmead, Ripon, Lathrop, Hunters Point, and San Francisco.
- A maximum of about 56 miles of pipeline loops on the existing Mojave Mainline and Mojave-Kern River East Side Lateral.
- A total of 73,088 to 78,758 horsepower (hp) of compression at three new compressor stations in California at Amboy, Daggett, and either Famoso or Lindsay plus the addition of 24,470 hp of compression to Mojave's existing compressor station at Topock, Arizona.
- Either 53 or 58 new meter stations depending on the final project configuration.

The final EIR/EIS has been placed in the public files of the FERC and SLC and is available for public inspection at the following locations:

Federal Energy Regulatory Commission, Division of Public Information, 941 North Capitol Street NE, Room 3104, Washington, DC 20426, (202) 208–1371

California State Lands Commission, 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825–8202, (916) 574–1814

Copies of the EIR/EIS have been mailed to the appropriate Federal, state, and local agencies and public libraries. Copies of either the EIR/EIS or an Executive summary have been mailed to those public interest groups, interested individuals, newspapers, and parties to this proceeding which requested them.

A limited number of copies of the final EIR/EIS may also be available from either of the following individuals:

Mr. Michael Boyle, Environmental Project Manager, Federal Energy Regulatory Commission, Office of Pipeline Regulation, Room 7312, 825 North Capitol Street NE, Washington, DC 20426, (202) 208–0839

Ms. Mary Griggs, Environmental Project Manager, California State Lands Commission, 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825-8202, (916) 574–1814

The EIR/EIS will be used in the regulatory decision-making process at the FERC. While the period for filing interventions in this case has expired, motions to intervene out-of-time can be filed with the FERC in accordance with the Commission's Rules of Practice and Procedures, 18 CFR 285.214(d). Further, anyone desiring to file a protest with the FERC should do so in accordance with 18 CFR 385.211.

The SLC is expected to certify the EIR/EIS and act on the application of the Mojave Pipeline Company at a regularly scheduled meeting later this year. The SLC will accept written comments at the address above. If you have any questions regarding the SLC hearing, or wish to testify, please contact Mary Griggs at (916) 574–1814.

Lois D. Cashell,

Secretary.

[FR Doc. 95–16099 Filed 6–29–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–573–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

June 26, 1995.

Take notice that on June 21, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed a request with the

Commission in Docket No. CP95–573–000 pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for a request to construct and operate facilities to establish twelve points of delivery to existing customers, authorized in blanket certificate issued in Docket No. CP83–76–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia proposes to construct and operate facilities to establish twelve additional points of delivery to existing customers and would continue to provide the customers with firm transportation service. Columbia states that there would be no impact on their existing design day and annual obligations to the customers as a result of the construction and operation of the new points of delivery. Columbia further states that the estimated cost to install the new taps would be approximately $1,800 or $150 per tap and would be treated as an O&M Expense.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, 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 NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, 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 NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 95–16100 Filed 6–29–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

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, please refer to EPA ICR #1078.04.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standard for Phosphate Rock Plants (EPA ICR #1078.04; OMB #2060–0111). This ICR is for an extension of an existing collection.

Abstract: Owners or operators of phosphate rock plants must notify the delegated State authority or EPA of construction, reconstruction, anticipated and actual dates of facility start-up, and dates and results of the initial performance test. Records must be maintained of the performance test results, and all start-ups, shutdowns, and malfunctions. Owners and operators must install and maintain a continuous monitoring system to measure opacity, or if a wet scrubber is used, monitor pressure drop and flow rate. Semiannual reports of excess emissions or monitoring system performance are required. The States and EPA will use the data to ensure compliance with the standards and to target inspections.

Burden Statement: Public reporting burden for this collection of information is estimated to average 118 hours per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, completing the collection of information and maintaining records.

Respondents: Facilities in fixed or portable nonmetallic mineral processing plants.

Estimated Number of Respondents: 16.

Estimated Total Annual Burden on Respondents: 1,887.

Frequency of Collection: Once and semiannually.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, (please refer to EPA ICR #1078.04 and OMB #2060–0111) to:

Sandy Farmer, EPA ICR #1078.04, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Chris Wolz, OMB #2060–0111, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503.

Dated: June 26, 1995.

Joseph Retzer,

Regulatory Information Division.

[FR Doc. 95–16178 Filed 6–29–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5251–1]

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, please refer to EPA ICR #1062.05.

SUPPLENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards for Coal Preparation Plants (EPA ICR #1062.05; OMB #2060–0122).

Abstract: This ICR is for an extension of an existing information collection in support of the Clean Air Act, as described under the general NSPS at 40 CFR 60.7–60.8, and the specific NSPS, regulating emissions from coal preparation plants, at 40 CFR 60.253. The EPA will use the information to direct monitoring, inspection, and enforcement efforts, thereby ensuring compliance with the NSPS.

Under this ICR owners and operators of new facilities, estimated at 18 facilities per year, must provide EPA with: (1) notification of construction or reconstruction, (2) anticipated and actual dates of facility start-up, and (3) notification of demonstration of the continuous monitoring system.

Owners and operators of 352 existing facilities must notify EPA of any physical or operational change to an existing facility which may increase the

regulated pollutant emission rate. All facilities must maintain records on the facility operation that document: (1) The occurrence and duration of any start-ups, shutdowns, and malfunctions; (2) measurements of particulate matter emissions; (3) pressure drops across any scrubber system; and (4) the initial performance test results of the continuous monitoring system demonstration. All subject facilities must maintain records related to compliance for 2 years.

Burden Statement: Public reporting burden for this collection of information is estimated to average 65 hours per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, completing the collection of information and maintaining records.

Respondents: Owners or operators of coal preparation plants.

Estimated Number of Respondents: 325.

Estimated Total Annual Burden on Respondents: 23,390 hours.

Frequency of Collection: Quarterly, semi-annually, annually and one-time notifications.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, (please refer to EPA ICR #1062.05 and OMB #2060–0122) to:

Sandy Farmer, EPA ICR #1062.05, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Troy Hillier, OMB #2060–0122, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: June 26, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–16179 Filed 6–29–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5250–6]

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, please refer to EPA ICR #1284.04.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards for Polymeric Coating of Supporting Substrates (EPA ICR #1284.04; OMB #2060–0181).

Abstract: This ICR is for an extension of an existing information collection in support of the Clean Air Act, as described under the general NSPS at 40 CFR 60.7–60.8, and the specific NSPS for volatile organic compound (VOC) emissions from facilities conducting polymeric coating of supporting substrates at 40 CFR Part 60.740–60.747. The EPA will use the information to direct monitoring, inspection, and enforcement efforts, thereby ensuring compliance with the NSPS.

Under this ICR owners and operators of affected facilities must provide EPA or the delegated authority with: (1) Notification of construction, reconstruction, or modification; (2) anticipated and actual dates of facility start-up; (3) initial performance test data, results, and if appropriate, projected solvent consumption for that year; (4) notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; (5) notification of demonstration of the continuous monitoring system; and (6) monitoring reports (submitted semi-annually for facilities operating within accepted parameters, quarterly for facilities which experience excess emissions or which deviate from operating parameters.)

All affected facilities must maintain records on the facility operation that document: (1) The occurrence and duration of any start-ups, shutdowns, and malfunctions; (2) actual solvent consumption; (3) initial performance test results; and (4) data on continuously monitored operating parameters.

Presently there are 31 facilities subject to the regulation with an estimated growth of 2–3 facilities over the next three years. All facilities must maintain records related to compliance for two years.

Burden Statement: Public reporting burden for this collection of information is estimated to average 172 hours per respondent, including time for reviewing instructions, searching existing data sources, gathering the data needed, completing the collection of information and maintaining records.

Respondents: owners or operators of polymeric coating operations.

Estimated Number of Respondents: 37.

Estimated Total Annual Burden on Respondents: 5,958 hours.

Frequency of Collection: quarterly, semi-annually, annually and one-time notifications.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, (please refer to EPA ICR # and OMB #2060–) to:

Sandy Farmer, EPA ICR #1284.04, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Troy Hillier, OMB #2060–0181, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: June 26, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–16181 Filed 6–29–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5250–7]

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, please refer to EPA ICR #0012.09.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Motor Vehicle Exclusion Request (EPA ICR #0012.09; OMB #2060–0124). This ICR requests renewal of the existing clearance.

Abstract: Motor vehicle and nonroad engine manufacturers may request that the Environmental Protection Agency determine whether a particular type of vehicle is excluded from coverage under Title II of the Clean Air Act. Manufacturers requesting EPA to make this determination must submit specifications of the vehicle, including its size, use, and top speed. The Agency will use the information to determine whether a motor vehicle or nonroad engine is excluded from the requirement to have a certificate of conformity.

Burden Statement: The public reporting burden for this collection of information is estimated to average 1 hour 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.

Respondents: vehicle manufacturers.

Estimated number of respondents: 210.

Estimated annual burden: 210 hours.

Frequency of collection: on occasion.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, (please refer to EPA ICR #0012.09 and OMB #2060–0124) to:

Sandy Farmer, EPA ICR #0012.09, U.S. Environmental Protection Agency, Information Policy Agency, Information Policy Branch (2136), 401 M Street, SW, Washington, DC 20460.

and

Troy Hillier, OMB #2060–0124, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, D.C. 20503.

Dated: June 26, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–16812 Filed 6–29–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5251–6]

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, please refer to EPA ICR #1084.04.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standard for Nonmetallic Mineral Processing Plants (EPA ICR #1084.04; OMB #2060–0050).

Abstract: This ICR is for an extension of an existing information collection in support of the Clean Air Act, as described under the general NSPS at 40 CFR 60.7–60.8, and the specific NSPS, regulating emissions from nonmetallic mineral processing plants, at 40 CFR 60.674–60.676. The EPA will use the information to direct monitoring, inspection, and enforcement efforts, thereby ensuring compliance with the NSPS.

Under this ICR owners and operators of new facilities, must provide EPA, or a delegated State or local authority, with: (1) Notification of construction or reconstruction, (2) notification of anticipated and actual dates of facility start-up, and (3) notification of the date of the initial performance test of the wet scrubber and a copy of the test results, (4) notification of demonstration of the continuous monitoring system, and (5) notification that the CMS data will be used during the initial performance test.

Owners and operators of facilities that were constructed or reconstructed, or modified prior to September 1, 1983 are exempt from this New Source Performance Standard. Owners or operators of exempted facilities may replace a piece or pieces of equipment with equal or smaller size piece(s) that perform the same function (provided that they do not replace the entire production line) without falling subject to this NSPS. An exemption report, however must be submitted to the Administrator describing: (1) Size and age of existing facility and the size of the new facility, (2) a description of the control device used on the existing facility, and a list of all facilities using the control device.

Owners and operators of all affected facilities must provide EPA, or a delegated State or local authority, with: (1) Reports, semiannually, of instances when scrubber pressure drop and liquid flow rate differ by more than 30% from the rates recorded during the most recent performance test; and (2) any physical or operational change to their facility which may increase the regulated pollutant emission rate. All facilities must maintain records on the facility operation that document: (1) The occurrence and duration of any start-ups, shutdowns, and malfunctions; (2) daily CMS readings; and (3) initial performance test conditions, measurements, and results.

Burden Statement: Public reporting burden for this collection of information is estimated to average 78 hours per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, completing the collection of information and maintaining records.

Respondents: Facilities in fixed or portable nonmetallic mineral processing plants.

Estimated Number of Respondents: 84.

Estimated Total Annual Burden on Respondents: 6,572.

Frequency of Collection: Semiannual reporting for existing facilities, with additional one-time reporting requirements for new facilities. Daily recordkeeping for all facilities.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, (please refer to EPA ICR #1084.04 and OMB #2060–0050) to:

Sandy Farmer, EPA ICR #1084.04, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Chris Wolz, OMB #2060–0050, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: June 26, 1995.

Joseph Retzer,

Regulatory Information Division.

[FR Doc. 95–16183 Filed 6–29–95; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL–4724–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 22, 1995 Through May 26, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Aactivities AT (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D–AFS–K61136–00 Rating EO2, Heavenly Ski Resort Master Plan, Improvement, Expansion and Management, Lake Tahoe Basin Management Unit, Special-Use-Permit, Douglas County, NV and El Dorado and Alpine Counties, CA.

SUMMARY: EPA expressed environmental objections to the proposed action due to potential adverse impacts to air and water quality. EPA urged consideration of a reduced development alternative that would have fewer impacts. EPA requested that the proposed project impacts be mitigated.

ERP No. D–BIA–J65231–MT Rating EC2, Yellowstone Pipe Line Easement, Construction and Operation, Renewal of Right-of-Way (ROW) Grant for Easement, Across the Flathead Indian Reservation, Approval of Trust and Allotted Lands and COE Section 404 Permit, Missoula, Lake and Sanders Counties, MT.

Summary: EPA expressed environmental concerns regarding the proposed action route, and the No Action Alternative. EPA indicated that the Modified Existing Route Alternative (MERA) is environmentally preferable and that industry state-of-the art leak detection equipment and valves be incorporated into the pipeline. In addition, a Product Spill Responsible Plan should be prepared and available for review with the final EIS.

ERP No. D–BLM–J02031–WY Rating EC2, Fontenelle Natural Gas Infill Drilling Projects, Implementation, Right-of-Way Grants and Permit Issuance, Sweetwater and Lincoln Counties, WY.

Summary: EPA expressed environmental concerns, especially cumulative impacts on air and water quality from the proposed action and numerous other proposed and current oil and gas actions in SW Wyoming. EPA has requested that the final EIS address this and supply additional information on monitoring and mitigation.

ERP No. D–DOE–A00168–00 Rating LO, Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel, Implementation, United States and Abroad.

SUMMARY: EPA reviewed the proposed action and the alternatives and had no comments.

ERP No. D–DOE–D05123–PA Rating EC2, York County Energy Partners Cogeneration Facility, Funding, Construction and Operation, 250 Megawatt Coal-Fired Cogeneration Facility, Clean Coal Technology Program (CCTP), North Codorus Township, York County, PA.

SUMMARY: EPA expressed environmental concerns based on deficiencies in the health assessment and concern that the air and solid waste emissions could be further reduced. EPA proposed a stakeholders meeting to discuss new technologies to further reduce project emissions.

ERP No. DS–FHW–D40141–00 Rating EC1, Appalachian Corridor D Construction, Ohio River to I–77, Updated Information concerning the completion of Corridor D ''Missing Link'', from US 50 in Belpre, OH to the Interchange east of Parkersburg, WV, US Coast Guard Bridge, COE Section 404 and NPDES Permits, WV and OH.

SUMMARY: While this document adequately addressed most of our previous concerns, EPA continues to have environmental concerns regarding potential stream/water quality impacts. EPA believes that the alternatives which avoid Blennerhassett Island a preferable.

FINAL EISs

ERP No. F–AFS–L61199–ID, Salmon Wild and Scenic River Corridor Project, Issuance of Special-Use-Permits for three Private Camps, Salmon National Forest, Salmon County, ID.

SUMMARY: Review of the final EIS has been completed and the project found to be environmentally satisfactory. No formal comment letter was sent to the preparing Agency.

ERP No. F–AFS–L65239–OR, East Fork Deer Creek Long-Term Ecosystem Productivity Research Study, Implementation, Willamette National Forest, Blue River Ranger District, Lane County, OR.

SUMMARY: EPA provided no formal written comments. EPA has no objection to the preferred alternative as described in the EIS.

ERP No. F–FHW–D40266–MD, Canal Parkway Development Study, Improvement from MD–51 to the Wiley Ford Bridge in Cumberland, Funding, Right-of-Way Grant and COE Section 404 Permit, Allegany County, MD.

Summary: Review of the final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–G40138–TX, US 82 Highway (East-West Freeway in the City of Lubbock) Transportation Improvements from South of Loop 289 to East of I–27 and Relocation of the Seagraves, Whiteface and Lubbock Railroad, Funding and Right-of-Way Grant, Lubbock County, TX.

Summary: EPA believes the final EIS has reasonably responded to comments. No formal comment letter was sent to the preparing agency.

ERP No. F–UAF–D11021–PA, Institute for Advanced Science and Technology (IAST) Site Selection and Construction, Funding, University of Pennsylvania, Philadelphia, PA.

Summary: EPA does not have any comments regarding the project. The final EIS adequately addresses our concerns on this project. No formal comment letter was sent to the preparing agency.

ERP No. FS–NRC–E06008–TN, Watts Bar Nuclear Plant, Units 1 and 2, Updated Information Related to the Operations, Facility Operating License and NPDES Permit Issuance, Rhea County, TN.

Summary: EPA had environmental concerns that this document did not adequately address two issues raised at the draft EIS stage: need for power; and pollution prevention and recommended that future NEPA documents be more inclusive of these issues.

Regulations

ERP No. R–NRC–A09823–00, 10 CFR Part 60 Disposal of High-Level Radioactive Wastes in Geologic Repositories; Proposed Rules FR 59.15180.

Summary: EPA reviewed the proposed rule and had no comments. No formal comment letter was sent to the preparing agency.

Dated: June 27, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–16176 Filed 6–29–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4724–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed June 19, 1995 Through June 23, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950265, FINAL EIS, FHW, MI, New Interchange at M–59/Squirrel Road and the Relocation of the M–59/Adams Road Interchange, Construction, Funding, NPDES and COE Section 404 Permits, Cities of Rochester Hills and Auburn Hills, Oakland County, MI, Due: July 31, 1995, Contact: Norman R. Stoner (517) 377–1880.

EIS No. 950267, FINAL EIS, AFS, CA, Falls Road Realignment and Reconstruction, Permit Approval, San Bernardino National Forest, San Bernardino County, CA, Due: July 31, 1995, Contact: Hal Seyden (909) 884–6634 Ext. 3160.

EIS No. 950268, FINAL EIS, COE, OR, Willamette River Temperature Control Study, Selective Withdrawal Structure(s) (SWS) Construction, McKenzie River Subbasin, OR, Due: July 31, 1995, Contact: Lynne Hamilton (503) 326–6133.

EIS No. 950269, FINAL EIS, AFS, NM, Diamond Bar Allotment Management Plan, Implementation, Gila National Forest, Mimbres Ranger District, Sierra, Catron and Grant Counties, NM, Due: July 31, 1995, Contact: Steve Libby (505) 388–8201.

EIS No. 950270, FINAL EIS, AFS, CA, Six Rivers National Forest Land and Resource Management Plan, Implementation, Humboldt, Trinity, Del Norte and Siskiyou Counties, CA, Due: July 31, 1995, Contact: Laura Chapman (707) 441–3537.

EIS No. 950271, DRAFT EIS, AFS, WA, Crown Jewel Mine and Mill Project, Construction and Operation, Gold and Silver Mining and Milling Project, Plan of Operations, Approval, Special-Use-Permits, and COE Section 404 Permit, Chesaw, Okanogan County, WA, Due: August 29, 1995, Contact: Phil Christy (509) 486–5137.

EIS No. 950272, DRAFT EIS, SFW, NM, AZ, Mexican Wolf (Canis lupus baileyi) Reintroduction within the Historic Range, Implementation, in the Southwestern United States, Catron, Dona Ana, Grant and Lincoln Counties, NM and Apache and Greenlee Counties, AZ, Due: October 31, 1995, Contact: David R. Parsons (505) 766–2914.

EIS No. 950273, DRAFT SUPPLEMENT, FHW, IL, FAP Route 340 Transportation Project, Construction from I–55 to I–80, Additional Information related to Tollway Elements, Funding, US Coast Guard Permit and COE Section 404 Permit, Cook, Dupage and Will Counties, IL, Due: August 14, 1995, Contact: Michael E. Cook (217) 492–4600.

EIS No. 950274, DRAFT EIS, NAS, CA, Programmatic EIS—NASA Ames Aerodynamic Testing Program, Implementation, Analyzation of the Noise Envelope of Future Wind Tunnel Testing at the National Full-Scale Aerodynamic Complex (NFAC), NASA Ames Research Center, Moffet Field, Santa Clara County, CA, Due: August 14, 1995, Contact: Kenneth M. Kumor (202) 358–1112.

EIS No. 950275, FINAL EIS, COE, MA, Boston Harbor Navigation Improvements and Berth Dredging Project, Implementation, Reserved Channel, Mystic River and Chelsea Creek, MA, Due: August 29, 1995, Contact: Peter Jackson (617) 973–5355.

EIS No. 950276, FINAL EIS, BLM, WY, Texaco's Stagecoach Draw Unit Natural Gas Field Development Project, Implementation, Application for Permit to Drill, Right-of-Way Grant, Temporary Use-Permit and COE Section 404 Permit, Farson, Sweetwater County, WY, Due: July 31, 1995, Contact: Bill McMahan (307) 382–5320.

EIS No. 950277, FINAL EIS, FAA, WI, Dane County Regional Airport, Air Carrier Runway 3–21 Construction and Operation and Associated Actions, Airport Layout Plan Approval and Funding, Dane County, WI, Due: August 14, 1995, Contact: William J. Flanagan (612) 725–4463.

EIS No. 950278, DRAFT EIS, AFS, ID, Idaho Panhandle National Forests Noxious Weed Management Projects, Implementation, Bonners Ferry District, Boundary County, ID, Due: August 14, 1995, Contact: Bob Klarich (208) 267–5561.

EIS No. 950279, DRAFT EIS, UAF, GA, F–15 Fighter Aircraft Conversion at Dobbins Air Force Base (AFB), Marietta, GA to B–1B Bomber Aircraft at Robins AFB, Warner Robins, GA and Training Airspace Modifactions Servicing the Savannah Combat Readiness Training Center (CRTC) Area, GA, Due: August 15, 1995, Contact: Ltc. Col. Stephen A. Shiell (301) 836–8844.

EIS No. 950280, DRAFT EIS, SFW, CO, Rocky Mountain Arsenal National Wildlife Refuge Establishment and Operation, Implementation, Adam County, CO, Due: August 14, 1995, Contact: Dave Shaffer (303) 289–0232.

Amended Notices

EIS No. 95077, DRAFT EIS, FHW, NC, Wilmington Bypass Transportation Improvement Program, Construction from I–40 to US 421, Funding, NPDES, US Coast Guard and COE Section 10 and 404 Permits, New Hanover County, NC, Due: July 21, 1995, Contact: Nicholas L. Graf (919) 856–4346. Published FR 03–17–95—Review period extended.

Dated: June 26, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–16175 Filed 6–29–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5250–9]

Common Sense Initiative Council (CSIC); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSIC Petroleum Refining Sector Subcommittee Meeting; Open Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Petroleum Refining Sector Subcommittee of the Common Sense Initiative Council (CSIC) will meet on the date and times described below. All times noted are Central Time. The meeting is open to the public. Seating at meeting will be on a first-come basis.

Petroleum Refining Sector Subcommittee—July 25–26, 1995

The Common Sense Initiative Council, Petroleum Refining Sector Subcommittee (CSIC–PRS) will hold an open meeting on Tuesday, July 25, 1995, from 8:00 a.m to 5:30 p.m. and Wednesday, July 26, 1995, from 8:30 a.m. to 5:00 p.m., at the Executive Tower Inn, 1405 Curtis Street, Denver, CO 80202.

The Subcommittee working groups will continue work on projects related to regulatory reform, recordkeeping and reporting, and accident prevention.

INSPECTION OF COMMITTEE DOCUMENTS: Documents relating to the topics noted above will be publicly available at the meeting. Thereafter, these documents and the CSIC–PRS meeting minutes will be available for public inspection in room 2417M of EPA Headquarters, 401 M Street, SW, Washington, DC 20460, phone (202) 260–7417. CSIC information can be accessed electronically through contacting Katherine Brown at: brown.katherine@epamail.epa.gov.

FOR FURTHER INFORMATION: Any member of the public wishing further information on the meeting should contact Judy Heckman at (214) 665–7231. Members of the public may submit written comments of any length prior to the meeting. Time has been set aside for public comments on Tuesday, July 25 between 4:45 and 5:15 p.m. and on Wednesday, July 26 between 10:15 and 10:45 a.m. Each individual or group making an oral statement will be limited to one presentation totaling five minutes.

Dated: June 26, 1995.

Meg Kelly,

Designated Federal Officer.

[FR Doc. 95–16180 Filed 6–29–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 90–119; DA 95–1395]

Florida Public Safety Plan Amendment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: Deputy Chief, Office of Engineering and Technology and the Chief, Private Wireless Division released this Order amending the Public Safety Radio Plan for Florida (Region 9). As a result of accepting the amendment for the Plan for Region 9, the interests of the eligible entities within the region will be furthered.

FOR FURTHER INFORMATION CONTACT: Deborah A. R. Behlin, Wireless Telecommunications Bureau, Private Wireless Division (202) 418–0680.

Order

Adopted: June 19, 1995
Released: June 27, 1995

By the Deputy Chief, Office of Engineering and Technology and the Chief, Private Wireless Division, Wireless Telecommunications Bureau:

1. By letter dated July 28, 1994, Region 9 (Florida) proposed to amend the Region 9 Public Safety Radio Plan that was accepted under delegated authority, by the Commission on November 8, 1989, 4 FCC Red 8352 (1989). The proposed amendment would revise the current channel allotments.

2. On October 28, 1994, the Commission placed the proposed amendment on Public Notice. No comments were received concerning the proposed amendment to the Region 9 Plan.

3. We have reviewed the proposed amendment to the Region 9 Plan and, having received no comments to the contrary, conclude it furthers the interest of the eligible Public Safety entities within the Region.

4. Accordingly, IT IS ORDERED, THAT the Public Safety Radio Plan for Region 9 IS AMENDED, as set forth in the Region's letter of July 28, 1994. This Amendment is effective immediately.

5. For further information, contact Deborah A. Behlin at (202) 418–0680.

Federal Communications Commission.

Robert H. McNamara,

Chief, Private Wireless Division.

[FR Doc. 95–16115 Filed 6–29–95; 8:45 am]

BILLING CODE 6712–01–M

[CC Docket No. 95–93; DA 95–1362]

TeleCable of Piedmont, Inc., Cencom Cable Income Partners, II, L.P., Cencom Cable Entertainment, Inc., and Cencom Cable Television, Inc., TeleCable of Spartanburg, Inc. and TeleCable of Greenville, Inc., v. Duke Power Company

AGENCY: Federal Communications Commission.

ACTION: Hearing Designation Order.

SUMMARY: The Chief, Common Carrier Bureau, pursuant to delegated authority, has designated for hearing the pole attachment complaints filed by TeleCable of Piedmont, Inc., Cencom Cable Income Partners, II, L.P., Cencom Cable Entertainment, Inc., and Cencom Cable Television, Inc., TeleCable of Spartanburg, Inc. and TeleCable of Greenville, Inc., v. Duke Power Company. This action is being done to expedite the resolution of these complaints.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W. Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Timothy Peterson, Common Carrier Bureau, Accounting and Audits Division, (202) 418–0847.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Order in CC Docket No. 95–93, adopted June 15, 1995 and released June 15, 1995. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington, D.C., and may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., at 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, or call (202) 857–3800.

Synopsis of Order

1. This Order designates for hearing the pole attachment complaints filed by TeleCable of Piedmont, Inc. (Piedmont), Cencom Cable Income Partners, II, L.P., Cencom Cable Entertainment, Inc., and Cencom Cable Television, Inc. (collectively, Cencom), TeleCable of Spartanburg, Inc. and TeleCable of Greenville, Inc. (Spartanburg/Greenville), v. Duke Power Company (Duke). The Piedmont complaint concerns the pole attachment rate Duke has charged Piedmont since July 1, 1990. The Cencom and Spartanburg/Greenville complaints concern the rates Duke has charged those complainants since those complaints were filed.

2. The Order directs the presiding administrative law judge to require the parties to meet prior to hearing to determine whether the case can be settled. In the event a settlement is not reached, the Order directs the presiding law judge to, if possible, resolve the case on a paper record. If unable to do so, the Order directs the presiding law judge to conduct such further proceedings as may be necessary to resolve the complaint.

3. This Order also directs parties to file any exceptions to the administrative law judge's decision to the Commission rather than to the Review Board.

4. The Order was effective upon release.

Ordering Clauses

5. Accordingly, it is ordered, pursuant to Sections 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.c. §§ 154(i), 154(j), & 224, and Sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91 & 0.291, that the complaints of TeleCable of Piedmont, Inc., Cencom Cable Income Partners, II, L.P., Cencom Cable Entertainment, Inc., Cencom Cable Television, Inc., TeleCable of Spartanburg, Inc. and TeleCable of Greenville, Inc. against Duke Power Company filed November 15, 1990, January 8, 1991, and January 15, 1991, respectively, are granted to the extent indicated and are denied to the extent indicated in Parts III and IV of this Order, and to the extent neither granted nor denied, are referred to an Administrative Law Judge.

6. It is further ordered, pursuant to Sections 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), & 224, and Sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91 & 0.291, that Duke shall pay refunds with interest thereon to Piedmont for July 1, 1990 through August 29, 1990 as

indicated in paragraphs 7–10 of this Order.

7. It is further ordered, pursuant to Sections 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), & 224, and Sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91 & 0.291, that the above-captioned complaint proceeding is designated for hearing in a proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent order upon the following issues:

1. To determine the refunds due Piedmont, including interest, for July 1, 1990 through August 29, 1990.

2. To determine whether Duke charged Piedmont, Cencom, and Spartanburg/Greenville pole attachment rates that exceeded the maximum amounts allowable under Commission rules during the periods since the complaints were filed.

3. If Duke has charged Complainants excessive pole attachment rates during the periods since the complaints were filed, to determine the amounts of the refunds Duke must pay Complainants for those periods.

4. To determine, in view of the evidence adduced on issues 2 and 3, above, whether Complainants are entitled to interest on any refund amounts for the periods since the complaints were filed and, if so, the amount of that interest.

8. It is further ordered, that the burden of proof and the burden of proceeding with the introduction of evidence shall be upon Complainants.

9. It is further ordered, that the designated parties may avail themselves of an opportunity to be heard by filing with the Commission a Notice of Appearance in accordance with Section 1.221 of the Rules, 47 CFR § 1.221, within twenty (20) days of the mailing of this Order.[1]

10. It is further ordered, that Duke and the Complainants shall file the information set both in paragraphs 25 and 26, above, within thirty (30) days of the mailing of this Order.

11. It is further ordered, that the parties shall address any exceptions to the ALJ's decision in this proceeding to the Commission.

Federal Communications Commission.

Kathleen M.H. Wallman,

Chief, Common Carrier Bureau.

[FR Doc. 95–16114 Filed 6–29–95; 8:45 am]

BILLING CODE 6712–01–M

[1] The separated trial staff will file an appropriate Notice of Appearance before participating in the proceedings before the presiding ALJ.

[CC Docket No. 95–95; DA 95–1364]

American Cablesystems of Florida, Ltd., d/b/a Continental Cablevision of Broward County, and Continental Cablevision of Jacksonville, Inc. v. Florida Power and Light Company

AGENCY: Federal Communications Commission.

ACTION: Hearing Designation Order.

SUMMARY: The Chief, Common Carrier Bureau, pursuant to delegated authority, has designated for hearing a pole attachment complaint filed by American Cablesystems of Florida, Ltd., d/b/a/ Continental Cablevision of Broward County, and Continental Cablevision of Jacksonville, Inc. v. Florida Power and Light Company. This action is being done to expedite the resolution of this complaint.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W. Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Thaddeus Machcinski, Common Carrier Bureau, Accounting and Audits Division, (202) 418–0808.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Order in CC Docket No. 95–95, adopted June 15, 1995 and released June 15, 1995. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington D.C., and may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., at 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, or call (202) 857–3800.

Synopsis of Order

1. This Order designates for hearing a pole attachment complaint filed by American Cablesystems of Florida, Ltd., d/b/a/ Continental Cablevision of Broward County, and Continental Cablevision of Jacksonville, Inc. (collectively, Continental) v. Florida Power and Light Company (Florida Power). The complaint concerns the pole attachment rates Florida Power has charged Continental TCA since August 4, 1992.

2. The Order directs the presiding administrative law judge to require the parties to meet prior to hearing to determine whether the case can be settled. In the event a settlement is not reached, the Order directs the presiding law judge to, if possible, resolve the case on a paper record. If unable to do so, the Order directs the presiding law judge to conduct such further proceedings as may be necessary to resolve the complaint.

3. This Order also directs parties to file any exceptions to the administrative law judge's decision to the Commission rather than to the Review Board.

4. The Order was effective upon release.

Ordering Clauses

5. Accordingly, It Is Ordered, pursuant to Sections 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 224, and Sections 0.91 and 0.291 of the Commission's Rules, 47 CFR 0.91 and 0.291, that the complaint American Cablesystems of Florida, Ltd., and Continental Cablevision of Jacksonville, Inc. filed August 4, 1992, against Florida Power and Light Company Is Granted to the extent indicated in Paragraph 10 of this Order, and to the extent not granted, Is Referred to an Administrative Law Judge.

6. It is Further Ordered, pursuant to Sections 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), & 224, and Sections 0.91 and 0.291 of the Rules, 47 CFR 0.91 and 0.291, that the above-captained complaint proceeding Is Designated For Hearing in a proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent order upon the following issues:

1. To determine whether Florida Power charged Continental pole attachment rates that exceeded the maximum amounts allowable under Commission rules during the period covered by the complaint.

2. If Florida Power has charged Continental excessive pole attachment rates during the period covered by the complaint, to determine the amounts of the refunds Florida Power must pay Continental.

3. To determine, in view of the evidence adduced on the foregoing issues, whether Continental is entitled to interest on any refund amounts and, if so, the amount of that interest.

7. It is Further Ordered, that the burden of proof and the burden of proceeding with the introduction of evidence Shall Be Upon Complainants.

8. It is Further Ordered, that the designated parties may avail themselves of an opportunity to be heard by filing with the Commission a Notice of Appearance in accordance with Section 1.221 of the Rules, 47 CFR 1.221, within twenty (20) days of the mailing of this Order.[1]

9. It is Further Ordered, that Florida Power and Continental Shall File the

[1] If the Bureau intends to participate in the proceedings before the presiding ALJ, the Bureau shall file an appropriate Notice of Appearance.

information set forth in paragraphs 12 and 13, above, within thirty (30) days of the mailing of this Order.

10. It is Further Ordered, that the parties Shall Address any exceptions to the ALJ's decision in this proceeding to the Commission.

Federal Communication Commission.

Kathleen M.H. Wallman,

Chief, Common Carrier Bureau.

[FR Doc. 95–16112 Filed 6–29–95; 8:45 am]

BILLING CODE 6712–01–M

[CC Docket No. 95–84; FCC 95–221]

TCA Management Co.; Teleservice Corporation of America; and TCA Cable of Amarillo, Inc. v. Southwestern Public Service Company

AGENCY: Federal Communications Commission.

ACTION: Hearing Designation Order.

SUMMARY: The Commission has adopted an order designating for hearing a pole attachment complaint filed by TCA Management Co., and its affiliates, Teleservice Corporation of America and TCA Cable of Amarillo, Inc. against Southwestern Public Service Company. This action is being done to expedite the resolution of this complaint.

FOR FURTHER INFORMATION CONTACT: Thaddeus Machcinski, Common Carrier Bureau, Accounting and Audits Division, (202) 418–0808.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order in CC Docket No. 95–84, adopted June 9, 1995 and released June 15, 1995. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington D.C., and may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., at 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, or call (202) 857–3800.

Synopsis of Order

1. This Order designates for hearing a pole attachment complaint filed by TCA Management Co., and its affiliates, Teleservice Corporation of America and TCA Cable of Amarillo, Inc. (collectively, TCA) against Southwestern Public Service Company (SPS). The complaint concerns the pole attachment rates SPS has charged TCA since October 16, 1990.

2. The Order directs the presiding administrative law judge to require the parties to meet prior to hearing to determine whether the case can be settled. In the event a settlement is not reached, the Order directs the presiding law judge to, if possible, to resolve the case on a paper record. If unable to do so, the Order directs the presiding law judge to conduct such further proceedings as may be necessary to resolve the complaint.

3. This Order also gives the Chief, Common Carrier Bureau the delegated authority to designate other pole attachment complaints for hearing before an administrative law judge and it directs the parties to the complaint to file any exceptions to the administrative law judge's decision to the Commission rather than to the Review Board.

4. The Order was effective upon release.

Ordering Clauses

5. Accordingly, it is ordered, pursuant to Sections 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), & 224, that the complaint of TCA Management Co., Teleservice Corporation of America, and TCA Cable of Amarillo, Inc. filed October 16, 1990, against Southwestern Public Service Company is granted to the extent indicated in Parts III and IV of this Order, and to the extent not granted, is referred to an Administrative Law Judge.

6. It is further ordered, pursuant to Sections 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), & 224, that the above-captioned complaint proceeding is designated for hearing in a proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent order upon the following issues:

1. To determine whether SPS charged TCA pole attachment rates that exceeded the maximum amounts allowable under Commission rules during the period covered by the complaint.

2. If SPS had charged TCA excessive pole attachment rates during the period covered by the complaint, to determine the amounts of the refunds SPS must pay TCA.

3. To determine, in view of the evidence adduced on the foregoing issues, whether TCA is entitled to interest on any refund amounts and, if so, the amount of that interest.

7. It is further ordered, that the burden of proof and the burden of proceeding with the introduction of evidence shall be upon complainants.

8. It is further ordered, that the designated parties may avail themselves of an opportunity to be heard by filing with the Commission a Notice of Appearance in accordance with Section 1.221 of the Rules, 47 C.F.R. § 1.221, within twenty (20) days of the mailing of this Order.

9. It is further ordered, that SPS and TCA shall file the information set forth in paragraphs 31 and 32, above, within thirty (30) days of the mailing of this Order.

10. It is further ordered, that the parties shall address any exceptions to the ALJ's decision in this proceeding to the Commission.

11. It is further ordered, that the Chief, Common Carrier Bureau, shall have delegated authority to designate pole attachment complaint cases for hearing before an Administrative Law Judge in appropriate circumstances.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–16073 Filed 6–29–95; 8:45 am]

BILLING CODE 6712–01–M

[CC Docket No. 95–94; DA 95–1363]

UACC Midwest, Inc. d/b/a/ United Artists Cable Mississippi Gulf Coast; Telecable Associates, Incorporated; Vickburg Video, Inc.; Mississippi Cablevision, Inc.; and Mississippi Cable Television Association v. South Central Bell Telephone Company

AGENCY: Federal Communications Commission.

ACTION: Hearing Designation Order.

SUMMARY: The Chief, Common Carrier Bureau, pursuant to delegated authority, has designated for hearing a pole attachment complaint filed by UACC Midwest, Inc. d/b.a/ United Artists Cable Mississippi Gulf Coast; Telecable Associates, Incorporated; Vicksburg Video, Inc.; Mississippi Cablevision, Inc.; and Mississippi Cable Television Association (collectively, Complainants) v. South Central Bell Telephone Company (South Central Bell). This action is being done to expedite the resolution of this complaint.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W. Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Timothy Peterson, Common Carrier Bureau, Accounting and Audits Division, (202) 418–0847.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Order in CC Docket No. 95–94, adopted June 15, 1995 and released June 15, 1995. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington D.C., and may also be

purchased from the Commission's copy contractor, International Transcription Service, Inc., at 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, or call (202) 857–3800.

Synopsis of Order

1. This Order designates for hearing a pole attachment complaint filed by Complainants v. South Central Bell. The complaint concerns the pole attachment rates South Central Bell has charged Complainants since 1991.

2. The Order directs the presiding administrative law judge to require the parties to meet prior to hearing to determine whether the case can be settled. In the event a settlement is not reached, the Order directs the presiding law judge to, if possible, resolve the case on a paper record. If unable to do so, the Order directs the presiding law judge to conduct such further proceedings as may be necessary to resolve the complaint.

3. This Order also directs parties to file any exceptions to the administrative law judge's decision to the Commission rather than to the Review Board.

4. The Order was effective upon release.

Ordering Clauses

5. Accordingly, It Is Ordered, pursuant to Sections 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), & 224, and Sections 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91 and 0.291, that the complaints of UACC Midwest, Inc. d/b/a United Artist Cable Mississippi Gulf Coast, Telecable Associates, Incorporated, Vicksburg Video, Inc., Mississippi Cablevision, Inc., and Mississippi Cable Television Association filed between September 10, 1991 and November 19, 1991 against South Central Bell Are Granted to the extent indicated and Are Denied to the extent indicated in Part III of this Order, and to the extent neither granted nor denied, Are Referred to an Administrative Law Judge.

6. It Is Further Ordered, pursuant to Sections 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), & 224, and Sections 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91 and 0.291, that the complaints of UACC Midwest, Inc. d/b/a United Artists Cable Mississippi Gulf Coast, Telecable Associates, Incorporated, Vicksburg Video, Inc., Mississippi Cablevision, Inc., and Mississippi Cable Television Association filed between September 10, 1991 and November 19, 1991 against South Central Bell Are Designated For Hearing in a proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent order upon the following issues:

1. To determine whether South Central Bell charged Complainants pole attachment rates that exceeded the maximum amounts allowable under Commission rules during the periods covered by the complaints.

2. If South Central Bell charged Complainants excessive pole attachment rates during the periods covered by the complaints, to determine the amounts of the refunds South Central Bell must pay Complainants.

3. To determine, in view of the evidence adduced on the foregoing issues, whether Complainants are entitled to interest on any refund amounts, and, if so, the amount of that interest.

7. It Is Further Ordered, that the burden of proof and the burden of proceeding with the introduction of evidence Shall Be Upon Complainants.

8. It Is Further Ordered, that the designated parties may avail themselves of an opportunity to be heard by filing with the Commission a Notice of Appearance in accordance with Section 1.221 of the Commission's rules, 47 CFR 1.221, within twenty (20) days of the mailing of this Order.[1]

9. It Is Further Ordered, that South Central Bell and Complainants Shall File the information set forth in paragraphs 19, 21 and 22, above, within thirty (30) days of the mailing of this Order.

10. It Is Further Ordered, that the parties Shall Address any exceptions to the ALJ's decision in this proceeding to the Commission.

Federal Communication Commission.

Kathleen M.H. Wallman,

Chief, Common Carrier Bureau.

[FR Doc. 95–16113 Filed 6–29–95; 8:45 am]

BILLING CODE 6712–01–M

[1] The separated trial staff will file an appropriate Notice of Appearance before participating in the proceedings before the presiding ALJ.

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Recordkeeping And Disclosure Requirements In Connection With Regulation Z (Truth In Lending).

Form Number: None.

OMB Number: 3064–0082.

Expiration Date of OMB Clearance: October 31, 1995.

Respondents: Insured nonmember banks.

Frequency of Response: On occasion.

Number of Respondents: 7,100.

Total Annual Responses: 7,100.

Total Annual Hours: 5,587,700.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0082, Washington, D.C. 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments of this collection of information are welcome and should be submitted before August 29, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed below. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Regulation Z (12 CFR 226) prescribes uniform methods of computing the cost of credit, disclosure of credit terms, and procedures for resolving billing errors on certain credit accounts. Regulation Z is issued by the Board of Governors of the Federal Reserve System (''FRB'') under the authority of Title I of the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*). Section 105 of the Act (15 U.S.C. 1604) designates the FRB as the issuer of the implementing regulations, and section 108(a) of the Act (15 U.S.C. 1607) designates the FDIC as having enforcement responsibilities in the case of insured nonmember banks.

Dated: June 26, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–16084 Filed 6–29–95; 8:45 am]

BILLING CODE 6714–01–M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information Collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified below.

Type of Review: Extension of expiration date without any change in substance or method of collection.

Title: Application for a Merger or Other Transaction Pursuant to Section 18(c) of the FDI Act (Phantom or Corporate Reorganization).

Form Number: FDIC 6220/07.

OMB Number: 3064–0015.

Expiration Date of Current OMB Clearance: August 31, 1995.

Frequency of Response: On occasion.

Respondents: State nonmember banks wishing to effect a merger-type transaction through corporate reorganization or phantom merger.

Number of Respondents: 100.

Total Annual Responses: 100.

Total Annual Burden Hours: 2,000.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0015, Washington, D.C. 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before August 29, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: An FDIC-supervised bank that wishes to effect a merger-type transaction through corporate reorganization or phantom merger is required to apply to the FDIC for written approval. The application form requests information that the FDIC must consider, by statute, when evaluating the application.

Dated: June 26, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–16085 Filed 6–29–95; 8:45 am]

BILLING CODE 6714–01–M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the method or substance of collection.

Title: Recordkeeping And Disclosure Requirements In Connection With Regulation E (Electronic Funds Transfers).

Form Number: None.

OMB Number: 3064–0084.

Expiration Date of OMB Clearance: October 31, 1995.

Respondents: Insured nonmember banks.

Frequency of Response: On occasion.

Number of Respondents: 7,100.

Total Annual Responses: 7,100.

total Annual Hours: 854,840.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0084, Washington, D.C. 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before August 29, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Regulation E (12 CFR 205) establishes the rights, liabilities, and responsibilities of parties in electronic funds transfers (''EFT'') and protects customers using EFT systems. Regulation E is issued by the Board of Governors of the Federal Reserve System (''FRB'') under the authority of Title IX of the Consumer Credit Protection Act (15 U.S.C. 1693). Section 904 of the Act (15 U.S.C. 1693b) designates the FRB as the issuer of the implementing regulations, and section 917(a) of the Act (15 U.S.C. 1693o) designates the FDIC as having enforcement responsibilities in the case of insured nonmember banks.

Dated: June 26, 1995.

Federal Deposit Insurance Corporation

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–16086 Filed 6–29–95; 8:45 am]

BILLING CODE 6714–01–M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the method or substance of collection.

Title: Recordkeeping And Disclosure Requirements In Connection With Regulation B (Equal Credit Opportunity).

Form Number: None.

OMB Number: 3064–0085.

Expiration Date of OMB Clearance: August 31, 1995.

Respondents: Insurance nonmember banks.

Frequency Response: On occasion.

Number of Respondents: 7,100.

Total Annual Responses: 7,100.

Total Annual Hours: 305,829.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0085, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before August 29, 1995.

ADDRESSES: A copy of the submission may be obtained by called or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Regulation B (12 CFR 202) prohibits creditors from discriminating against applicants on any of the bases specified by the Equal Credit Opportunity Act, establishes guidelines for gathering and evaluating credit information, and requires creditors to give applicants a written notification of rejection of an application. Regulation B is issued by the Board of Governors of the Federal Reserve System (''FRB'') under the authority of Title VII of the Consumer Credit Protection Act (15 U.S.C. 1691). Section 703 of the Act (15 U.S.C. 1691b) designates the FRB as the issuer of the implementing regulations, and section 704(a) of the Act (15 U.S.C. 1691c) designates the FDIC as having enforcement responsibilities in the case of insured nonmember banks.

Dated: June 26, 1995.

Federal Deposit Insurance Corporation

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–16087 Filed 6–29–95; 8:45 am]

BILLING CODE 6714–01–M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the method or substance of collection.

Title: Recordkeeping And Disclosure Requirements In Connection With Regulation M (Consumer Leasing).

Form Number: None.

OMB Number: 3064–0083.

Expiration Date of OMB Clearance: October 31, 1995.

Respondents: Insured nonmember banks.

Frequency of Response: On occasion.

Number of Respondents: 7,100.

Total Annual Responses: 7,100.

Total Annual Hours: 28,400.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0083, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, Room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before August 29, 1995.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Regulation M (12 CFR 213) implements the consumer leasing provisions of the Truth In Lending Act. Regulation M is issued by the Board of Governors of the Federal Reserve System (''FRB'') under the authority of Title I of the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*). Section 105 of the Act (15 U.S.C. 1604) designates the FRB as the issuer of the implementing regulations, and section 108(a) of the Act (15 U.S.C. 1607) designates the FDIC as having enforcement responsibilities in the case of insured nonmember banks.

Dated: June 26, 1995.

Federal Deposit Insurance Corporation

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–16088 Filed 6–29–95; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATIONS COUNCIL

Proposed Schedule on Trust Income and Expense

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Request for comment.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC) [1] proposes to add Schedule E—Fiduciary Income Statement (Schedule) to the Annual Report of Trust Assets (FFIEC 001). The agencies currently have no other source which provides trust income and expense data in a consistent and timely manner from those institutions engaged in fiduciary activities that are supervised by the agencies. The information requested would help the agencies monitor and evaluate the performance of and risks associated with the fiduciary industry.

The proposed Schedule would be required to be filed by all trust institutions with $100 million or more in total trust assets as reported on Schedule A, Annual Report of Trust Assets, on Form FFIEC 001. In addition, all non-deposit trust companies, whether or not they report any assets on Schedule A, would be required to file this Schedule. The proposed Schedule would be prepared on a calendar year basis beginning with the year ending December 31, 1996.

DATES; Comments must be received by August 29, 1995.

ADDRESSES: Comments should be directed to Joe M. Cleaver, Executive Secretary, Federal Financial Institutions Examination Council, 2100 Pennsylvania Avenue, NW, Suite 200, Washington, D.C. 20037. (Fax number (202) 634–6556.)

FOR FURTHER INFORMATION CONTACT:

Board: Donald R. Vinnedge, Manager, Trust Activities Program, (202) 452–2717; William R. Stanley, Supervisory Trust Analyst, Trust Activities Program, (202) 452–2744.

FDIC: James D. Leitner, Examination Specialist, Division of Supervision, 202 898–6790; Robert F. Storch, Chief, Accounting Section, Division of Supervision, (202) 898–8906.

OCC: William L. Granovsky, National Bank Examiner, Compliance Management, (202) 874–4447.

OTS: Larry A. Clark, Program Manager, Compliance and Trust, (202) 906–5628.

SUPPLEMENTARY INFORMATION:

Background

The FFIEC is proposing to add a schedule to the Annual Report of Trust Assets to annually collect limited trust income and expense information. Since this information generally pertains to only a portion of the reporting organization's total operations, the data reported by individual institutions would be regarded as confidential by the FFIEC and the agencies. Aggregate information, however, would be

[1] The FFIEC consists of representatives from the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS) (referred to as the ''agencies''), and the National Credit Union Administration. However, this request for comment is not directed to credit unions. Section 1006(c) of the Federal Financial Institutions Examination Council Act requires the FFIEC to develop uniform reporting standards for federally-supervised financial institutions.

published annually in an FFIEC publication entitled ''Trust Assets of Financial Institutions.''

The off-balance sheet nature of fiduciary activities presents certain impediments to the agencies in the development and implementation of fiduciary and related supervision policy. The lack of uniform, consistent and industry-wide information on fiduciary income and expenses precludes effective analysis of fiduciary profitability and risk management for an individual institution, a peer group, and the entire industry. In addition, trust profitability is one of the rating factors in the Uniform Interagency Trust Rating System and the new schedule would enable the agencies to monitor trust income and losses between trust examinations.

Presently, the information collected on trust activities is limited to an annual reporting requirement for banks, savings associations, and trust companies showing discretionary and nondiscretionary trust assets by various types of accounts. Without income-related information from the same set of reporters, the agencies' ability to measure the risk associated with particular lines of fiduciary business and to evaluate the functional activities causing losses is hampered.

There are approximately 3,000 banks, savings associations, and trust companies that actively engage in trust activities. These institutions administered $10.6 trillion of assets as of December 31, 1993, or more than three times the banking industry's on-balance sheet assets. As proposed, less than one third of these institutions would be required to report their income and expenses on the new schedule.[2] These reporting institutions would account for approximately 99 percent of all trust assets. The size distribution of institutions engaging in trust activities as of December 31, 1993, was as follows:

Size of institution	Number of institutions	Trust assets
$1 billion or more in trust assets	314	$10,400
$100 million to less than $1 billion in trust assets	545	165
Less than $100 million in trust assets	1,960	33
Totals	2,819	$10,598

The fiduciary business has continued to grow substantially both in terms of assets administered and the variety and sophistication of investment services offered. Trust assets administered have grown by 61 percent over five years from $6.6 trillion in 1988 to $10.6 trillion in 1993. During this time, the proportion of these assets subject to the investment discretion of trust management has increased from 17 percent to 19 percent of trust assets.

Similarly, based on bank holding company reports to the Board on form FR Y–9C, it is estimated that gross fees from fiduciary activities for the 50 largest bank holding companies (in asset size) during this five year period has increased by 87 percent from $5.2 billion in 1988 to $9.7 billion in 1993. For these 50 organizations, these fees rose from 16 percent of total non-interest income in 1988 to 18 percent in 1993. The five year growth in trust assets and gross fee income supports the need for the agencies to collect and evaluate uniform information on income and expenses for individual institutions as an element of their supervisory oversight over these institutions and the industry.

Description of Proposed Schedule E—Fiduciary Income Statement

The proposed Schedule would be prepared on a calendar year basis beginning with the year ending December 31, 1996. Individual agencies, at their own discretion, may request that institutions under their supervision voluntarily file this Schedule for the year ending December 31, 1995.

The proposal calls for institutions to provide a breakdown of fiduciary income along six categories that correspond to the existing account classifications on Schedule A, Annual Report of Trust Assets, and Schedule C, Corporate Trusts, of the FFIEC 001. This would permit the agencies to compare income data with information on assets managed and to enhance their understanding of the operations of individual institutions.

Expense information is proposed to be broken out by three categories: (1) Salaries and Employee Benefits; (2) Other Direct Expense; and (3) Allocated Indirect Expense. This would permit the development of efficiency or overhead ratios comparable to those commonly used in the analysis of commercial bank operations.

The proposed Schedule includes two types of breakdowns of losses resulting from surcharges and settlements (e.g., replenishment of losses incurred by fiduciary customers). For the first breakdown, these losses would be separately reported for ten categories of fiduciary activities: (1) Employee Benefit Trusts—Discretionary; (2) Employee Benefit Trusts—Non-Discretionary; (3) Personal Trusts and Estates—Discretionary; (4) Personal Trusts and Estates—Non-Discretionary; (5) Employee Benefit Agencies—Discretionary; (6) Employee Benefit Agencies—Non-Discretionary; (7) Other Agency Accounts—Discretionary; (8) Other Agency Accounts—Non-Discretionary; (9) Corporate Trusts and Agencies; and (10) All Other Activities. The losses for the first eight of the preceding categories can be measured against the dollar amount of trust assets held by that type of account as reported on Schedule A of the Annual Report of Trust Assets. Corporate trusts can be compared against information collected on Schedule C of the Annual Report of Trust Assets where the number of issues and principal amount of outstanding securities are shown.

In addition to collecting loss information by type of account, these data would be reported by type of loss: (1) Investment; (2) Administrative; and (3) Operational. This breakdown will provide the agencies with information on the types of losses that can adversely affect an institution's condition. Consequently, if an institution or a group of institutions show data or trends in data for certain types of losses, this form of reporting will help the agencies develop and implement appropriate supervisory policies and examination emphasis. Further, this information will help examiners determine ratings for the Earnings, Volume Trends and Prospects components of the Uniform Interagency Trust Rating System for an institution under examination.

Request for Comment

The FFIEC is requesting comment on all aspects of the proposed Schedule. In particular, the FFIEC requests comment on the availability of the information to be collected in the Schedule and the cost and time required to implement any needed changes in the institution's recordkeeping systems to provide the requested information. Comment is also requested on the cost and time required to complete the proposed Schedule each year thereafter. Institutions addressing availability, cost, and time should

[2] Although data for 1994 show that assets grew by one trillion dollars and the number of institutions engaged in fiduciary activities decreased by about 100, no significant change was noted in the number of institutions subject to the proposed reporting requirement.

indicate the total amount of their trust assets.

The FFIEC also requests comment on the feasibility of providing such data for the calendar year ending December 31, 1996. If the proposed effective date for this reporting is not feasible, please explain why it is not feasible and comment on how soon thereafter such data would be available.

In order to limit the reporting burden of the new schedule, banks and savings associations with less than $100 million in total trust assets (as reported on line 18, column F, of Schedule A of the FFIEC 001) would not be required, but would be encouraged, to complete the schedule. The FFIEC requests comment on this reporting threshold for filing the Schedule. Also, the FFIEC requests comment on the proposed requirement that nondeposit trust companies with less than $100 million in total trust assets on Schedule A of the Annual Report of Trust Assets file this Schedule.

Finally, the FFIEC requests comment on the adequacy and clarity of the proposed instructions. Suggested improvements are welcome and are encouraged.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the current Annual Report of Trust Assets required from those institutions with trust powers and under the supervision of one of the agencies has been submitted to, and approved by, the U.S. Office of Management and Budget (OMB). (OMB Control Numbers: for the Board, 7100–0031; for the OCC, 1557–0127; for the FDIC, 3064–0024; and for the OTS, 1550–0026.) The final version of the proposed changes that are the subject of this request for comment, which will be developed after consideration of the comments received, will be submitted by each agency to OMB for its review.

The proposed Schedule E and its accompanying instructions are illustrated as follows:

Dated: June 26, 1995.

Joe M. Cleaver,

Executive Secretary, Federal Financial Institutions Examination Council.

BILLING CODE 6210–01–M

SCHEDULE E - FIDUCIARY INCOME STATEMENT

Reporting Year 199_ (Confidential Information)

1.GROSS FEES, COMMISSIONS AND OTHER FIDUCIARY INCOME

(a) Employee Benefit Trust Accounts _____
(b) Personal Trust & Estate Accounts _____
(c) Employee Benefit Agencies _____
(d) Other Agency Accounts _____
(e) Corporate Trust & Agency Accounts _____
(f) All Other Fiduciary Income _____
(g) **Total Fiduciary Income** *(Sum of items 1(a) through 1(f))* _____

2.EXPENSES

(a) Salaries and Employee Benefits _____
(b) Other Direct Expense _____
(c) Allocated Indirect Expense _____
(d) **Total Expense** *(Sum of items 2(a) through 2(c))* _____

3.SETTLEMENTS, SURCHARGES & OTHER LOSSES

(a) Gross Settlements, Surcharges & Other Losses _____ *
(b) Recoveries to Reported Losses _____
(c) Net Settlements, Surcharges & Losses _____

* *(Details of this item to be provided in the box below)*

4.NET OPERATING INCOME (LOSS) *(Item 1(g) minus items 2(d) and 3(c))* _____

5.CREDIT FOR OWN-INSTITUTION DEPOSITS _____

6.NET TRUST INCOME (LOSS) *(Item 4 plus item 5)* _____

7. Settlements, Surcharges & Other Losses

By Type of Account		Discretionary	Non-Discretionary
Employee Benefit Trust Accounts		(a) _____	(e) _____
Personal Trust & Estate Accounts		(b) _____	(f) _____
Employee Benefit Agencies		(c) _____	(g) _____
Other Agency Accounts		(d) _____	(h) _____
Corporate Trust & Agency Accounts	(i) _____		
All Other Activities	(j) _____		

(Total of amounts in items 7(a) through 7(j) must equal line 3(a) above)

By Type of Loss	
Investment Losses	(k) _____
Administrative Losses	(l) _____
Operational Losses	(m) _____

(Total of amounts in items 7(k) through 7(m) must equal line 3(a) above)

MEMO ITEM FOR ENTRY BY NON-DEPOSIT TRUST COMPANIES ONLY - SEE INSTRUCTIONS

8.NON-FIDUCIARY INCOME _____

BILLING CODE 6210–01–C

Annual Report of Trust Assets—Form FFIEC 001

Specific Instructions

Schedule E—Fiduciary Income Statement

Who Must Report: This Schedule must be completed by each financial institution with more than $100 million in Total Trust Assets as reported on Schedule A (Line 18, Column F). In addition, all non-deposit trust companies, whether or not they report any assets on Schedule A, must also file Schedule E. Institutions which are not required to file Schedule E are encouraged to file it on a voluntary basis.

Public Availability of Schedule E: The information on Schedule E is confidential and will not be publicly available. The aggregate information will be included in the annual FFIEC publication, *Trust Assets of Financial Institutions*.

Instructions: Institutions filing Schedule E must complete *all* portions of the Schedule. Enter a zero on any line item that does not apply to your institution.

1. Gross Fees, Commissions and Other Fiduciary Income

1(a through e) Trust and Agency Accounts

Gross fees, commissions and other fiduciary income data is to be reported by line of business. Please refer to the instructions for Schedules A and C for guidance in defining these lines of business. For employee benefit trust accounts, see Schedule A, column A; for personal trust & estate accounts, see Schedule A, columns B and C; for other agency accounts, see Schedule A, column E; and for corporate trust and agency accounts, see Schedule C.

Fees received for IRA, Keogh Plan or other accounts that are not administered by the trust department should be excluded from this Schedule. If these accounts require the bank to have trust powers, then their fees should be reported on this Schedule.

1(f) All Other Fiduciary Income

Report all other direct income derived from other fiduciary sources not included in any of the above categories (e.g. 12b–1 fees and income from providing fiduciary services under agreement with another institution). Include all internal allocations of income to the trust function (such as transfer agent or pension plan administration credits), except for credits for deposits held in own or affiliated institutions, which are to be reported on line 5.

1(g) Total Fiduciary Income

The total of lines 1(a) through 1(f). (It should be noted that banks with more than $100 million in commercial bank assets are required to itemize ''Income from fiduciary activities'' in the quarterly FFIEC Report of Condition and Income (''Call Report'') on line 5(a) of Schedule RI. Instructions for fiduciary income to be reported on line 5(a) of Call Report Schedule RI differ from those for line 1(g) of this Schedule with respect to allocated income. Consequently, banks should be aware that the amounts reported in these two items will differ by the amount of such allocated income.)

2. Expenses

2(a) Salaries and Employee Benefits

Include salaries, bonuses, hourly wages, overtime pay, and incentive pay for officers and employees of the trust department. If officers or employees spend only a portion of their time in the trust department, allocate that proportional share of their salaries and employee benefits. Expenses associated with employee benefit plans (pension, profit-sharing, 401(k), ESOP, etc.), health and life insurance, Social Security and unemployment taxes, tuition reimbursement, and all other so-called fringe benefits, should be included on this line.

2(b) Other Direct Expense

In general, direct expenses are immediately identifiable as costs expended for and under the control of the trust function. These include expenses related to the use of trust premises, furniture, fixtures, and equipment, as well as depreciation/amortization, ordinary repairs and maintenance, service or maintenance contracts, utilities, lease or rental payments, insurance coverage, and real estate and other property taxes if they are directly chargeable to the trust function.

2(c) Allocated Indirect Expense

Allocated indirect expenses are those charged to the trust function from other departments of the institution. These include any allocation for the trust functions' proportionate share of corporate expenses that cannot be directly charged to particular departments or functions. If the institution's accounting system is not able to provide this information, the institution may use a reasonable alternate method.

Indirect expenses include audit and examination fees, marketing, charitable contributions, customer parking, holding company overhead, and, in many cases, functions such as personnel, corporate planning, and corporate financial staff. Other indirect expenses include the trust function's proportionate share of building rent or depreciation, utilities, real estate taxes, and insurance.

If no direct expense is shown for occupancy on line 2(b), an allocated occupancy expense based on proportionate floor space used by the trust function should be shown on line 2(c).

2(d) Total Expense

The total of lines 2(a) through 2(c).

3. Settlements, Surcharges and Other Losses

See the instructions for line 7 for information about the reporting of settlements, surcharges and other losses.

3(a) Gross Settlements, Surcharges & Other Losses

Report the total losses prior to any adjustments for recoveries. The amount shown on this line should agree to the total of the details shown in the box on line 7.

3(b) Recoveries to Reported Losses

Show all recoveries received on reported losses.

3(c) Net Settlements, Surcharges & Losses

Line 3(a) less 3(b).

4. Net Operating Income (Loss)

Line 1 (g) minus line 2(d) and 3. If the result is less than zero, the figure should be shown in parentheses.

5. Credit For Own-Institution Deposits

Uninvested cash belonging to fiduciary accounts is available to the commercial banking side of the institution for investment, trust functions are often given credit for the use of these monies. When this credit is given to the trust department or trust company as part of the bank's profit tracking system, it should be reported on line 5. Do not include actual interest earned on fiduciary funds on deposit, as this income would normally belong to the fiduciary account.

6. Net Trust Income (Loss)

Report the total amount of trust income or loss, prior to any income taxes, experienced by the trust function for the full year. The number for this line is the result of adding line 5 to the

sub-total shown on line 4. If the total on line 6 is less than zero, the resulting figure should be shown in parentheses.

7. Settlements, Surcharges & Other Losses

Report gross losses resulting from charge-offs, settlements, judgments, or other claims which are included in the total shown on line 3. These amounts should not be shown net of any recoveries or insurance payments. Legal expenses should be included on line 2(b) or 2(c). Do not include contingent liabilities related to outstanding litigation.

Account Definitions—Lines 7(a) through 7(j)

Report settlements, surcharges, and other losses arising from errors, misfeasance or malfeasance according to the type of account and capacity. The sum of lines 7(a) through 7(j) should equal the total shown on line 3(a) above.

Risk Definitions—Lines 7(k) through 7(m)

Settlements, surcharges, and other losses should also be reported by the functional activity which gave rise to the payment. The sum of the amounts reported by such functional activity on lines 7(k) through 7(m) should equal the total shown on line 3(a), ''Settlements, Surcharges and Other Losses.''

Investment Losses: The amount paid or credited to accounts or account holders for losses arising from the investment management of account assets in situations where the bank exercises discretion in the selection, purchase, retention, or sale of an account's assets.

Administration Losses: The amount paid or credited to accounts or account holders as reimbursement for losses arising from the management of the accounts. Such losses generally arise from the failure to fulfill responsibilities established by the agreement under which the bank is acting or failure to fulfill the duties inherent in the fiduciary capacity under which the bank is authorized to act.

Operational Losses: The amount paid or credited to accounts or account holders as restitution for losses arising from accounting and other support activities, such as securities trade processing. Operational losses include all activities which support investment and account administration functions.

Memo Item to Be Completed by Non-Deposit Trust Companies Only

8. Non-Fiduciary Income

Stand alone or non-deposit trust companies, whose activities area limited to providing fiduciary services, may have income not directly attributable to the furnishing of fiduciary services. This income should be reported on this line 8 as a memo figure and should not be included in the data shown on lines 1 through 6.

[FR Doc. 95-16090 Filed 6-29-95; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

Associated Banc-Corp; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-15132) published on page 32322 of the issue for Wednesday, June 21, 1995.

Under the Federal Reserve Bank of Chicago heading, the entry for Associated Banc-Corp, is revised to read as follows:

1. Associated Banc-Corp, Green Bay, Wisconsin; to acquire Great Northern Mortgage, Rolling Meadows, Illinois, and thereby engage in mortgage banking activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Comments on this application must be received by June 30, 1995.

Board of Governors of the Federal Reserve System, June 26, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–16105 Filed 6–29–95; 8:45 am]

BILLING CODE 6210–01–F

Berkshire Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 25, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Berkshire Bancorp, Pittsfield, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Berkshire County Savings Bank, Pittsfield, Massachusetts.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Harris Taubman Financial Corporation, Fayette, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of CTC Bancorp, Inc., Fayette, Missouri, and thereby indirectly acquire Commercial Trust Company of Fayette, Fayette, Missouri.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Wells Fargo & Company, San Francisco, California; to acquire 80 percent of the voting shares of Wells Fargo HSBC Trade Bank, National Association, San Francisco, California.

Board of Governors of the Federal Reserve System, June 26, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–16106 Filed 6–29–95; 8:45 am]

BILLING CODE 6210–01–F

Fredric R. LeVarge, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-15412) published on page 32680 of the issue for Friday, June 23, 1995.

Under the Federal Reserve Bank of Atlanta heading, the entry for Fredric R. LeVarge, is revised to read as follows:

1. Fredric R. and Patricia M. LeVarge, both of Tampa, Florida; to acquire an additional 10.2 percent, for a total of 19.5 percent of the voting shares of City Financial Corporation of Tampa, Tampa, Florida, and thereby indirectly acquire City First Bank, Tampa, Florida.

Comments on this application must be received by July 7, 1995.

Board of Governors of the Federal Reserve System, June 26, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–16107 Filed 6–29–95; 8:45 am]

BILLING CODE 6210–01–F

Wisconsin Bank Services, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 14, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Wisconsin Bank Services, Inc., Black River Falls, Wisconsin; to engage *de novo* through its subsidiary, Jackson County Bank, Black River Falls, Wisconsin, in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 26, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–16108 Filed 6–29–95; 8:45 am]

BILLING CODE 6210–01–F

OFFICE OF GOVERNMENT ETHICS

Submission of Executive Branch Confidential Financial Disclosure Reporting Format for Extension of OMB Approval Under the Paperwork Reduction Act

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics has submitted the Standard Form (SF) 450 Executive Branch Confidential Financial Disclosure Report, along with its underlying regulatory provisions for a two-year extension of Office of Management and Budget (OMB) approval under the Paperwork Reduction Act.

DATES: Comments on this proposal should be received by July 31, 1995.

ADDRESSES: Comments should be sent to Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; telephone: 202–395–7316.

FOR FURTHER INFORMATION CONTACT: Heather N. Sigrist or William E. Gressman, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917; telephone 202–523–5757, FAX 202–523–6325. A copy of OGE's request for extension from OMB, including a copy of the SF 450 Confidential Financial Disclosure Report, may be obtained by contacting Ms. Sigrist or Mr. Gressman.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is submitting the SF 450 Confidential Financial Disclosure Report, and the underlying regulatory provisions primarily at subpart I of OGE's 5 CFR part 2634 regulation, for renewed approval by OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35). The SF 450 serves as the uniform report form for collection, on a confidential basis, of financial information required by the OGE regulation from certain new entrant and incumbent employees of the executive branch departments and agencies in order to allow ethics officials to conduct conflict of interest reviews and resolution of any actual or potential conflicts found.

The basis for the OGE regulation and the SF 450 is two-fold. First, section 201(d) of Executive Order 12674 of April 12, 1989 (as modified by Executive Order 12731 of October 17, 1990) makes OGE responsible for the establishment of a system of nonpublic (confidential) financial disclosure by executive branch employees to complement the system of public disclosure under the Ethics in Government Act of 1978 (the ''Ethics Act''), as amended, 5 U.S.C. appendix. Second, section 107(a) of the Ethics Act further provides authority for OGE as the supervising ethics office for the executive branch of the Federal Government to require that executive agency employees file confidential financial disclosure reports, ''in such form as the supervising ethics office may prescribe.'' The SF 450, together with the underlying OGE regulation, both adopted in 1992 after appropriate clearances from OMB as well as the General Services Administration (GSA) for the form, constitute the form OGE has prescribed for such confidential financial disclosure in the executive branch.

The Office of Government Ethics has submitted this confidential financial disclosure form package for a two-year extension of Office of Management and Budget (OMB) approval under the Paperwork Reduction Act. A new OGE form 450 to replace the SF 450 is anticipated in the next year or two (see the further discussion below).

Since the OGE's financial disclosure regulation at 5 CFR part 2634 and the reporting format were adopted in 1992, there have been certain revisions to each. The most significant of these is the determination of OGE to exclude from general executive branch confidential financial disclosure the reporting of cash accounts in depository institutions (including banks), money market mutual funds and accounts and U.S. Government obligations and securities. See 58 FR 63023–63024 (November 30, 1993). The Office of Government Ethics has directed executive departments and agencies to notify all filers of this change, which is not reflected on the SF 450 itself. The new OGE replacement form will reflect that change as well as various other changes and improvements in the reporting format. Once ready, it will likewise be submitted for OMB paperwork approval, after which it will supersede the SF 450. Again, OGE expects that the new form will be ready, after OMB clearance, for dissemination to executive branch departments and agencies in the next

year or two. The Office of Government Ethics will provide appropriate guidance and phase-in time to departments and agencies once the new form is available.

For now, the SF 450 Confidential Financial Disclosure Report, available from GSA, continues to serve as the standard form for executive branch collections of confidential financial information required by 5 CFR part 2634 (see § 2634.601(a) and subpart I), for both regular and special Government employees SGE. Since 1992, various agencies have developed, with OGE review/approval alternative reporting formats, such as certificates of no conflict, for certain classes of employees. Other agencies provide for additional disclosures pursuant to independent organic statutes. However, the SF 450 remains the uniform executive branch report form for most executive branch employees who are required to report confidentially on their financial interests. The SF 450 report form is filed by each reporting individual with the designated agency ethics official at the executive agency where he or she is or will be employed.

Reporting individuals are regular employees whose positions have been designated by their agency as requiring confidential financial disclosure in order to help avoid conflicts with their assigned responsibilities; additionally, all special Government employees are generally required to file. Agencies may, if appropriate under the OGE regulation, exclude employees or SGEs as provided in 5 CFR 2634.905. Reports are normally required to be filed within 30 days of entering a covered position (or earlier if required by the agency concerned), and again annually if the employee serves for more than 60 days in the position. As indicated in § 2634.907 of the OGE regulation, the information required to be collected includes assets and sources of income, gifts and travel reimbursements, liabilities, employment agreements and arrangements, and outside positions, subject to certain thresholds and exclusions.

Most of the persons who file this report form are current executive branch Government employees at the time they complete the forms. However, some filers are private citizens who are asked by their prospective agency to file a new entrant report prior to entering Government service in order to permit advance checking for any potential conflicts of interest and resolution thereof by agreement to recuse, divest, obtaining of a waiver, etc. Based on OGE's annual agency ethics questionnaire responses, approximately 285,000 SF 450 report forms were filed during 1994 throughout the executive branch. Of these, OGE estimates that no more than 10%, or some 28,500 per year at most, are filed by private citizens, those potential regular employees whose positions are designated for confidential disclosure filing as well as potential special Government employees whose agencies require that they file their new entrant reports prior to assuming Government responsibilities.

Each filing is estimated to take an average of one and one-half hours. The number of private citizens whose reports are filed each year with OGE is less than 10, but pursuant to 5 CFR 1320.7(s)(1), the lower limit for this general regulatory-based requirement is set at 10 private persons (OGE-processed reports). This yields an annual reporting burden of 15 hours, the same as in the current OMB inventory for this information collection. The remainder of the private citizen reports are filed with other departments and agencies throughout the executive branch.

Approved: June 26, 1995.

Donald E. Campbell,

Deputy Director, Office of Government Ethics.

[FR Doc. 95–16068 Filed 6–29–95; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Title: ACF 106–State JOBS Plan and ACF 107—State Supportive Services Plan

OMB: No.: 0970–0108

Description: The information collected is required by the Social Security Act to collect program and financial data under the AFDC program. The State agency provides a quarterly estimate of the total amount and the Federal share of expenditures to be made in administering the AFDC program.

Respondents: State governments

Title	Number of respondents	Number of responses per respondent	Average burden per response	Burden
ACF–107	54	1	109	5,886
ACF–106	54	1	109	5,886

Estimated Total Burden: 11,772.

Additional Information: Copies of the proposed collection may be obtained from Bob Sargis of the Division of Information Resources Management, ACF, by calling (202) 690–7275.

OMB Comment: Consideration will be given to comments and suggestions received within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: June 21, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–16157 Filed 6–29–95; 8:45 am]

BILLING CODE 4184–01–M

[Program Announcement No. ACYF–HS 93600–954]

Fiscal Year 1995 Discretionary Announcement for Head Start Research Projects and Program Projects; Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF).

ACTION: Announcement of the availability of funds and request for

applications for six priority areas related to Head Start.

SUMMARY: The Administration for Children and Families, Administration on Children, Youth and Families, announces the availability of funds for research activities in three priority areas; for demonstrations in two priority areas; and for the establishment of the Head Start Fellows Program.

DATES: The closing date for the *receipt* of applications under this announcement is 5:30 p.m. (Eastern Time Zone) on August 16, 1995. Applications will be considered as meeting the deadline if they are received on or before the *receipt* date at the address below.

ADDRESSES: Applications are to be *mailed* to: Head Start Discretionary Funds Program Announcement, Priority Area _____, (ACYF/HS 93600–954), Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW, Washington, DC 20447.

HAND CARRIED PACKAGES, COURIER, OR OVERNIGHT DELIVERY APPLICATION PACKAGES are accepted during the normal working hours of 8 a.m. to 5:30 p.m., (Eastern Time Zone), Monday through Friday, on or prior to the established closing date at: Head Start Discretionary Funds Program Announcement Priority Area _____, (ACYF/HS 93600–954, U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 6th Floor, 901 D Street, SW (ACF Guard Station to call DDG at 401–9234), Washington DC 20447.

FOR FURTHER INFORMATION CONTACT: Administration on Children, Youth and Families, Head Start Bureau, P.O. Box 1182, Washington, DC 20013 Contacts for priority areas are:

1.01 Esther Kresh 202/205–8115
1.02 Esther Kresh 202/205–8115
1.03 James Griffin 202/205–8138
1.04 Dennis Gray 202/205–8404
1.05 Trellis Waxler 202/205–8422
1.06 Frankie Gibson 202/205–8399

SUPPLEMENTARY INFORMATION:

Part I. Introduction

A. Contents of This Announcement

This program announcement is divided into four sections:

- Part I provides background and recent history of the Head Start program and the research activities related to Head Start. Included is the rationale for the combined announcement and the statutory authority.
- Part II includes the review process and the evaluation criteria.
- Part III includes the description of each of the priority areas.
- Part IV provides instructions for the development and submission of an application and contains the necessary forms.

B. Background and Recent History

Head Start provides comprehensive educational, health, nutritional, social and other services primarily to low-income preschool children age three to the age of compulsory school attendance, and their families. An essential feature of every Head Start program is the involvement of parents, both in the development of their children and in the direction of the program at the local level.

In fiscal year 1994, the Advisory Committee on Head Start Quality and Expansion issued its recommendations for improvement and expansion. The recommendations were designed to build upon Head Start's impressive track record of success in working with low-income children and families.

That success was based on three principles: Head Start's comprehensive approach, its commitment to parents and its community focus. As Head Start looks toward the 21st century it will continue to build on the concept of Head Start serving as a central community institution for low-income children and their families. Head Start will: (1) Ensure quality and strive to attain excellence in every local Head Start program, (2) respond flexibly to the needs of today's children and their families and (3) forge new partnerships at the community, State and Federal levels, renewing and recrafting these partnerships to fit the changes in families, communities, and state and national policy.

Included in this announcement is a range of activities that will keep Head Start preeminent in the field of early childhood and family support programs. The size of the program, its comprehensive services, the diversity of the population served and the fact that it is federally funded makes it ideal as a national laboratory for best practices in early childhood and family support services. As Head Start is expanding and renewing itself there is a concomitant need for more research. Head Start is continuing to highlight emerging research and to encourage dialogue between the research community and practitioners.

As Head Start continues to work to better meet the needs and build on the strengths of children and families, it is useful to study successful approaches from other settings and to explore promising practices from other areas of child and family development that are transferable to a Head Start setting. We are looking for ways to stimulate and support research that will have immediate as well as longer term impact on the program. We are looking at approaches for increasing Head Start efforts to involve parents in all aspects of the program. The program is also expanding the resources used by grantees and families to promote literacy and parenting education.

C. Program Purpose

This announcement compiles in one document a description of the Head Start discretionary funds available in fiscal year 1995. This announcement indicates the range of activities necessary in keeping Head Start as the standard for excellence in early childhood and family support programs. The announcement includes research, demonstrations and the Fellows program for improving the quality of personnel in and around Head Start.

D. Statutory Authority

Catalog of Federal Domestic Assistance (CFDA) number 93.600, Project Head Start. 42 U.S.C. 9801, et seq., The Head Start Act, as amended.

Part II. The Review Process and Evaluation Criteria

A. Eligible Applicants

Various public or private non-profit organizations are eligible to apply. Specific requirements for each Priority Area are included in Part III.

Before applications are reviewed, each application will be screened to determine that the applicant organization is an eligible applicant as specified under the selected priority area. Ineligible applicants will be notified at that time.

Only agencies and organizations, not individuals, are eligible to apply. On all applications developed jointly by more than one agency or organization, the application must identify only one organization as the lead organization and the official applicant. The other organizations can be included as co-participants, subgrantees or subcontractors.

B. Review Process

Applications received by the due date will be reviewed and scored competitively. Experts in the field, generally persons from outside the Federal government, will use the evaluation criteria listed in Section D of this part to review and score the applications. The results of this review

are a primary factor in making funding decisions. ACYF may also solicit comments from ACF Regional Office staff and other Federal agencies. These comments, along with those of the expert reviewers, will be considered in making funding decisions.

In selecting successful applicants, consideration may be given to achieving an equitable distribution of assistance among geographic regions of the country and to avoiding unnecessary duplication of effort.

C. Schedule for Awards

ACYF intends to award new grants and cooperative agreements resulting from this announcement during the fourth quarter of fiscal year 1995.

D. Evaluation Criteria

1. Evaluation Criteria for Research Priority Areas

The research priorities 1.01, 1.02, and 1.03 will be evaluated against the following criteria. Where some part of the criteria apply only to the Research Centers on Head Start Quality (RCHSQs) it has been noted.

a. Objectives and Understanding (15 points)

The extent to which the application concisely states the specific objectives of the research and, (RCHSQs only) how each project will relate to the overall Consortium of RCHSQs.

The extent to which the stated objectives reflect a knowledge of the literature, current theories, state-of-the-art methodologies and techniques, current Head Start research, policies and practices, and the extent to which the stated goals are achievable and realistic.

b. Background and Significance (15 points)

The extent to which the application effectively discusses how the proposed research builds upon the current Head Start knowledge base and contributes to policy, practice, and future research efforts.

The potential contribution of the research for improving Head Start practices or the quality of services for children and families with different characteristics and circumstances.

c. Approach (30 points)

The extent to which the approach reflects a partnership between the applicant and the Head Start program.

The extent to which the proposed methodology is appropriate to the questions under consideration.

The extent to which the application addresses potential difficulties and presents adequate solutions.

The quality of the project's conceptual framework, design and methodology. The appropriateness of the instruments for measuring key variables and the adequacy of their psychometric properties. The adequacy of the methods to minimize bias and threats to validity.

The adequacy of plans to protect research participants.

Adequacy of the plans for dissemination of research results.

d. Staff Background and Organizational Experience (30 points)

The extent to which the qualifications of key staff are sufficient for the conduct of the research.

The extent to which the application demonstrates the ability of the staff and organization to effectively and efficiently administer a project of the size, complexity and scope proposed.

The extent to which the principal investigator (for 1.01), the supervising faculty advisor (for 1.02) or the research center director (for 1.03), demonstrate commitment by allocating reasonable time to this project.

The extent to which key staff have experience in other collaborative efforts as (1) part of a consortium and/or (2) in partnership with Head Start or other community organizations.

Evidence of support for this project from Head Start directors, staff and parents and other key civic leaders.

(RCHSQs only) The extent to which the research team is inter-disciplinary, reflecting the disciplines of importance to Head Start.

e. Budget Appropriateness and Reasonableness (10 Points)

The appropriateness of the proposed approach in relation to the budget constraints, and reasonableness of the costs in relation to the conduct of the research and the products produced.

2. Evaluation Criteria for Demonstration Program Priorities and the Fellows Program

Applications under Priority Areas 1.04, 1.05 and 1.06 will be evaluated against the following criteria.

a. Objectives and Need for Assistance (15 points)

The extent to which the applicant identifies and documents any relevant economic, social, financial institutional or other problems requiring a solution; demonstrates the need for the assistance; and states the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant on the need for assistance may be used.

b. Results or Benefits Expected (15 points)

The extent to which the applicant identifies the specific and measurable results and benefits to be derived which are consistent with the objectives of the proposal and indicates the anticipated contributions to policy, practice, theory and/or research.

c. Approach (40 points)

The extent to which the applicant outlines an acceptable plan of action pertaining to the scope of the project and details how the proposed work will be accomplished and lists each organization, consultant, and other key individuals who will work on the project. Describe in sufficient detail the evaluation methodology that will be used to determine and document if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

d. Staff Background and Organization's Experience (20 Points)

Identifies the background of the project director/principal investigator and key project staff (including name, address, training, most relevant educational background and other qualifying experiences along with resumes and a short description of their responsibilities or contribution to the applicant's work plan), the experience of the applicant in administering a project like the one proposed, and the applicant's ability to effectively and efficiently administer this project.

e. Budget Appropriateness and Reasonableness (10 Points)

The extent to which the project's costs are reasonable in view of the activities to be carried out and the anticipated outcomes. In Priority Areas 1.05 and 1.06 where applicants are encouraged to provide in-kind contributions, the degree to which these in-kind contributions contribute to the budget appropriateness and reasonableness will be evaluated in this criteria. The extent to which assurances are provided that the applicant can and will provide in-kind contributions to the total project.

Part III. Priority Areas

There are six priority areas in this program announcement, three in research areas, two demonstration priority areas, and one priority area for the establishment of the Head Start Fellows Program as follows:

1.01 Head Start/University Partnerships—Translating Research into Practice
1.02 Support for Graduate Students: The Head Start Research Scholars Program
1.03 Research Centers on Head Start Quality
1.04 Head Start Fellows Program
1.05 Head Start Emergent Literacy Project
1.06 Supporting Parent Roles in Children's Learning Environments

For priority areas 1.01 and 1.02, we will be using the grant funding mechanism. For priority areas 1.03, 1.04, 1.05 and 1.06 we are seeking partners with whom we will enter into a cooperative agreement funding mechanism.

A cooperative agreement is a funding mechanism which allows substantial Federal involvement in the activities undertaken with Federal financial support. Details of the responsibilities, relationships, and governance of the cooperative agreement will be spelled out in the terms and conditions of the award. The specific responsibilities of the Federal staff and project staff will be identified and agreed upon prior to the award of each cooperative.

A. Structure of Priority Area Descriptions

Each priority area description is composed of the following sections:

- Eligible Applicants—This section specifies the type of organization which is eligible to apply under the particular priority area.
- Purpose—This section presents the basic focus and/or broad goal(s) of the priority area.
- Background Information—This section briefly discusses the legislative background and or the social context that supports the need for this particular priority area.
- Project Implementation—(Priority 1.03 only)
- Minimum Requirements for Project Design—This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation and community involvement. This section also asks for specific information on the proposed project.
- Project Duration—This section specifies the maximum allowable length of time for the project period; it refers to the amount of time for which Federal funding is available
- Federal Share of Project Costs—This section specifies the maximum amount of Federal support for the project.
- Matching Requirement—This section specifies the minimum in-kind contributions. In-kind contributions are defined as the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be made in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project.
- Anticipated Number of Projects to be Funded—This section specifies the number of projects that ACYF anticipates it will fund in the priority area.
- CFDA—This section identifies the Catalog of Federal Domestic Assistance (CFDA) number and title of the program under which applications in this priority area will be funded.

B. Priority Areas

1.01 Head Start/University Partnerships—Translating Research Into Practice

Eligible Applicants: Universities and four-year colleges.

Purpose: To conduct research on practices that enhance children's cognitive or social-emotional development or support families to maximize their children's development. The products of this research should be of immediate usefulness to Head Start programs and other child and family development programs.

Background Information: Because of its role as a national laboratory, Head Start has an interest in assisting in the development of best practices in child and family development which are based on scientifically sound research.

Also, because of its recognition as a national, federally-sponsored program, and the access it provides to a multi-cultural, low-income population, Head Start has been a major source of research. This research, which has been conducted both with federal support and other resources, constitutes a significant portion of the child development research literature that includes low-income and multi-cultural populations.

In the main, this ever-increasing body of literature contains studies that fall into the domains of basic research and evaluation. Although these studies have made a significant contribution to our scientific, policy and general program knowledge, very little has reached service providers in terms of implementable applications within the context of their programs. Therefore, with the increase in our knowledge base, there is a concomitant increase in the gap between research and its translation into practice.

Within this priority area, ACYF is interested in funding projects that translate research into practice in partnership with the staff and families of Head Start programs. In addition to the translation of research into practice, these partnerships are intended to demonstrate new ways of conducting research where the researchers, the program staff and program families work as a cooperative research team.

Projects under this priority area will: (1) Test approaches intended to enhance children's cognitive or social-emotional development or to support families toward maximizing their children's development, and (2) train program staff both in the direct use of the approach and in the training of other staff. These approaches may include those where the child, the family as the mediating influence of child outcomes, or both the primary caregivers and the child are targeted. The chosen approach should reflect theory and previous research. In particular, if a family support approach is selected, the theoretical links between the particular support mechanisms and maximum child development should be clearly delineated.

In addition, the approach may be developed for appropriate use with either infants and toddlers or preschool children.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant must:

- Identify the area of cognitive development, social-emotional development or family support to be enhanced by the particular approach that will be developed or modified.
- Place the proposed project in the context of previous research, theory or existing knowledge. A strong and convincing rationale for the need for the proposed project should be provided that is supported by research evidence and results from any relevant planning studies, pilot studies, or other preparatory work conducted by the applicant.
- Describe the research design which includes a research paradigm appropriate for the particular study; the way in which the program staff and parents will be incorporated as part of the research team for the design and conduct of the study; the measures that will be used to determine child and family outcomes on the particular attributes of cognitive development, social-emotional development or family support under study.
- Describe the approach that will be undertaken to implement the project's

approach, if successful, as a permanent program feature including staff and parent training.

- Provide evidence of the key research staff's ability to conduct the project, including vitae and other appropriate documentation.

- Identify the Head Start program(s) with which the applicant institution would collaborate in the conduct of the research, and include letters indicating that the local Head Start program's Policy Council, staff and parents are willing to participate as part of the research team and how they would continue to use the approach in their program, if successful, after the grant expires.

- Describe the population served by the Head Start program(s) including relevant information such as size, ethnicity, income levels, percent of single parent families, and other relevant information.

- Provide assurances that the principal investigator or another appropriate staff member will attend one 2–3 day grantee meeting in Washington, DC each year in addition to Head Start's Third National Research Conference to be held on June 20–23, 1996.

- Provide all required assurances and certifications, including a Protection of Human Subjects Assurance as specified in the policy described on the HHS Form 596 (attached as appendix).

- Describe the report and/or other products that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

- Since the project will be conducted at Head Start sites, the applicant should apply the university's indirect cost rate for off-campus research.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $150,000 for the first 12-month budget period or a maximum of $450,000 for a 3-year project period. The Federal share is *inclusive* of indirect costs.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that 4 projects will be funded.

CFDA: 93.600 Head Start: Head Start Act, as amended

1.02 Support for Graduate Students: The Head Start Research Scholars Program

Eligible Applicants: Institutions of higher education on behalf of qualified doctoral candidates enrolled in the sponsoring institution. To be eligible to administer the grant on behalf of the student, the institution must be fully accredited by one of the regional accrediting commissions recognized by the Department of Education and the Council on Post-Secondary Accreditation. In addition, the specific graduate student on whose behalf the application is made must be identified and any resultant grant award is not transferable to another student.

Purpose: To provide support for graduate students to encourage the conduct of research with Head Start populations which will contribute to the knowledge base for improving services both for children and families in Head Start and for all low-income children and families.

Background Information: A large body of literature exists on the early years of the Head Start program. A significant number of these studies are dissertations and other research conducted by graduate students. Many of these graduate students have continued to make significant contributions to Head Start as they have pursued their careers. As Head Start has continued to grow, its population has become more diverse and societal problems have become more complex, reflecting the changes in the larger low-income population. In order to meet today's challenges, Head Start and the child and family development field are increasingly in need of the information that only sophisticated research conducted by well trained researchers can provide. Therefore, as part of a research capacity building effort, Head Start is interested in supporting graduate students with diverse backgrounds and from diverse fields to conduct research in Head Start programs and, thus, contributing to the larger child and family development field.

A new generation of Head Start research is needed that recognizes the great diversity among Head Start programs and the populations which it serves. Although Head Start delivers a core set of services which are defined by the Head Start Program Performance Standards, there is wide variability across programs in terms of the methods by which these services are delivered. Within programs, moreover, children and families vary in their levels of functioning, ethnicity and other variables which interact with program interventions. The Head Start population offers a unique opportunity for research which will contribute to understanding the differences in this diverse population and how to effectively tailor services and interventions for children and families with different characteristics.

Research is needed on the particular learning styles, the cognitive and social development, and the developmental trajectories of children as well as on indicators of family functioning as they are manifested in specific cultural and/or linguistic groups, children with specific disabilities, and families at different levels of functioning. In addition, suitable measures of child, adult and family functioning must be identified and adapted for specific subgroups of this diverse population.

ACYF is interested in supporting doctoral-level students, through their sponsoring institutions, who are now conducting or wish to conduct research using the Head Start population on issues affecting low-income children and families, and which will contribute to our knowledge about the best approaches for delivering services to diverse low-income populations. Doctoral-level graduate students who are representative of Head Start's diverse populations are particularly encouraged to apply.

Research projects may include independent studies conducted by the graduate students or projects that graduate students carry out that are well-defined portions of a larger study currently being conducted by a principal investigator holding a faculty position.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant must:

- Propose one or more research questions which would contribute to the body of knowledge about Head Start children, families and programs which generalizes to the entire low-income population.

- Place the proposed project in the context of previous research or existing knowledge, and provide a strong and convincing rationale for the need for the proposed project or, if the proposed project is part of a larger study, identify the area which would be investigated under this priority area.

- Present specific results from any relevant planning studies, pilot studies, or other preparatory work conducted by the candidate.

- Describe the research design that would be employed including the research methods; sample selection;

proposed measurement instruments, surveys, interviews, observation procedures or other data collection procedures; and proposed statistical analyses.

- Identify the Head Start program(s) in which the research would be conducted and describe the characteristics of the Head Start sample including relevant information such as size, ethnicity, income levels, family composition, and welfare status.
- Provide letters of commitment from the local Head Start program(s) assuring its participation in the plan for the study and its agreement to participate in the study including assurances that the project has been reviewed by staff and parents in the program and the Policy Council.
- Provide evidence of the candidate's ability to conduct the research including education, employment experiences, publications, and information on current academic status.
- Provide a letter from a faculty member providing assurances that he or she has read and approved the proposal and would serve as a mentor/advisor to the student throughout the life of the project.
- Provide assurances that the grant would be used to pay a stipend to the candidate; any appropriate university fees; and major project costs for conducting the proposed research, including any necessary travel.
- Provide all required assurances and certifications, including a Protection of Human Subjects Assurance as specified in the policy described on the HHS Form 596.
- Consider, because of the small amount of these awards, waiving any overhead or indirect costs.
- Provide assurances that the candidate would attend one 2–3 day meeting of the Head Start Research Scholars in Washington, DC each project year in addition to Head Start's Third National Research Conference to be held in Washington, DC June 20–23, 1996.
- Describe the report and/or other products that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $15,000 for the first 12-month budget period or a maximum of $30,000 for a 2-year project period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that 10 projects will be funded. No individual university will be funded for more than one candidate.

CFDA: 93.600 Head Start: Head Start Act, as amended

1.03 Research Centers on Head Start Quality (RCHSQs)

Eligible Applicants: Institutions of higher education (a four-year college or university) or nonprofit research institutions that have formed a partnership with one or more Head Start grantee or delegate agency.

Purpose: The Administration on Children, Youth and Families (ACYF) is currently engaged in a process of reviewing and implementing policies which will create a 21st Century Head Start. A cornerstone of this effort is a focus on quality program practices: What they are, how they can be reliably assessed and monitored, and their relationship with program outcomes and performance measures. The Head Start Bureau plans to create ongoing partnerships with the academic community and Head Start grantees by supporting Research Centers on Head Start Quality (RCHSQs) using the cooperative agreement mechanism. The goals of the RCHSQ Consortium will be to:

(1) Support the exploration of important research questions relating to quality program practices;

(2) Identify existing measures and develop, test, and refine new measures of program quality and methods of assessing program quality, by:

- Reviewing and synthesizing the literature on program quality and performance measures from the broader early childhood and family support fields to develop a comprehensive set of quality indicators;
- Developing, refining, and piloting data collection for Head Start Program Performance Measures; and
- Developing, refining, and piloting approaches to the observation and measurement of quality practices in Head Start programs, including current Head Start monitoring practices and data collection procedures.

(3) Develop ongoing databases and data analytic strategies useful for examining quality practices in Head Start programs, by:

- Working with Head Start grantees and ACYF Regional and Central Office staff to analyze existing program data, including monitoring and Management Information System data as well as data that individual programs or Regions may collect and data sets from other research and evaluation projects;
- Conducting observations of program practices, including participating in monitoring visits performed by ACYF staff;
- Gathering additional data, based both on ideas generated at the RCHSQs and proposals from ACYF; and
- Synthesizing and applying to the study of Head Start findings from relevant studies in the literature on quality early childhood program practices;

(4) Explore linkages among program practices, program quality measures, program performance measures, and observable outcomes for children and families, by:

- Reviewing and synthesizing the literature on the association between program quality measures, performance measures, and child and family outcomes from the broader early childhood and family support fields to develop a comprehensive set of child and family outcome measures; and
- Developing, refining, and piloting approaches to the observation and measurement of child and family outcomes and their relationship to quality Head Start program practices.

(5) Provide an ongoing mechanism for information dissemination about quality program practices and measures to the Head Start, early childhood, and family support communities.

The RCHSQs will operate within the context of a multi-center Consortium, and each RCHSQ will form an intensive partnership with at least one Head Start program. Each Center will conduct research projects which include both site-specific studies which are unique to that RCHSQ and cross-cutting research projects that involve all of the RCHSQs in the Consortium. The development and piloting of quality indicators and measurement techniques by the RCHSQs will contribute to the assessment of Head Start program quality and performance across the nation and to generating a set of indicators that can be used locally and nationally for future studies of program quality.

Background Information: Head Start has had a longstanding commitment to quality programming, both at the individual grantee level, where Performance Standards have been in place for 20 years, and at the national level, as evidenced by the National Head Start Association's quality initiative, which has established a benchmark for the provision of quality services to children and families from low socioeconomic status backgrounds. In the opening paragraph of the research

section of their report, *Creating a 21st Century Head Start* (1994), the Advisory Committee on Head Start Quality and Expansion stated:

> Head Start is entering an historic period of reexamination, improvement in quality, and expansion of services. The size of the program, its comprehensive services, the diversity of the population it serves, and the fact that it is federally funded suggest a role for Head Start as a national laboratory for best practices in early childhood and family support services in low-income communities. Because Head Start needs to expand and renew itself in order to assume its role as a state-of-the-art 'technology,' there is a concomitant and compelling need for a new, expanded, and formal role for Head Start research.

The Head Start Act, as amended May 18, 1994, in section 649(d)(1), mandates Head Start to: (1) Permit ongoing assessment of the quality and effectiveness of programs; and, (2) contribute to developing knowledge concerning factors associated with the quality and effectiveness of Head Start programs and in identifying ways in which services provided may be improved. In response to the reauthorization legislation, the Head Start Bureau is engaged in the process of revising the Head Start Performance Standards and developing a set of Head Start Performance Measures. We anticipate that the RCHSQs will play an active role in examining the implementation of the revised Performance Standards and the new Performance Measures and their implications for Head Start program quality.

In order for the Head Start program to fulfill its legislative mandate and to continue to ''strive for excellence'' in serving both children and families, research efforts must also lead the field in exploring new methodologies and strategies for the conduct of research on quality practices. Program monitoring data collected through the On-Site Program Review Instrument (OSPRI) are available which quantify the areas in which programs are in compliance with the current set of Head Start Performance Standards. However, many more analyses of these data and additional information is needed to plan program improvements and to inform policymakers about the key program quality elements that are associated with positive outcomes for children and families. Information is needed at the local and national levels which examines the best ways to provide quality services in all domains—education, health, parent partnerships and involvement, social services and disabilities. The Head Start Program Performance Standards, both as currently implemented and when revised, can serve as a useful tool to the research community to help understand and assess the indicators of quality at the local level. Additionally, the ways programs interpret these Standards to meet the needs of a diverse population under various conditions can also provide a rich source of data regarding how to define and implement comprehensive child development and family support programs.

There are additional sources of program quality indicators, including measures of best practices for child care, classroom and family support services. In some cases there are established empirical links between these best practices and child or family outcomes which cut across the early childhood and/or family support fields; this body of research can inform and be informed by research on Head Start quality through a dialogue between Head Start and the broader early childhood and family support fields. In addition, the National Head Start Association and the National Association for the Education of Young Children have developed criteria for certifying high quality programs. Head Start now has the opportunity and mandate to draw together the early childhood and family support literature with multiple Head Start indices to provide a new and comprehensive picture of the dynamics of quality services and to provide leadership through its role as a national laboratory.

Quality program practices will be identified by the RCHSQs using a variety of nomination procedures, including program monitoring, peer nominations, direct observation and other approaches. The RCHSQ staff will visit a wide range of Head Start programs both during independent site visits and as part of monitoring site visits conducted by the ACF Regional Offices. In partnership with Head Start programs, the RCHSQs will pilot test different innovative, but convergent, methods for collecting information on the Head Start Performance Measures (e.g., classroom observations, child assessments, parent interviews, etc.) and select corresponding child, parent and community outcome measures in order to examine the association between quality program practices, performance measures and positive outcomes.

Throughout the work of the RCHSQs, a special emphasis will be placed on the dissemination of findings and assessment measures to the Head Start community. Publications written for program personnel and/or videos will be produced throughout the five year Consortium period which focus on quality program practices and their assessment. These publications/videos will be produced in partnership with the Training and Technical Assistance Branch of the Head Start Bureau and will be disseminated by ACYF.

Project Implementation: Each applicant for a RCHSQ will be required to propose a research workplan which will be negotiated between the applicant and ACYF and updated on a yearly basis. The workplan proposed by the applicant will include both projects unique to that applicant's RCHSQ *and* research projects that involve all of the RCHSQs in the Consortium. Applicants must clearly identify in their proposals both site-specific research projects and preliminary cross-cutting, collaborative projects which would be negotiated by the RCHSQ Consortium and ACYF and implemented by the entire RCHSQ Consortium. The site-specific portion of the proposed research workplan will be subject to approval by ACYF, but will not be reviewed by the other Centers. The cross-cutting portion of each Center's proposed workplan and the research needs of the Head Start Bureau will be reviewed by the Consortium and ACYF before the final cross-cutting research plan is approved by ACYF and is implemented by the Consortium. Each Center's proposed budget must allocate approximately 50 percent of its funds to site-specific and cross-cutting projects, respectively. The final allocation of Center funds to each type of project for a given year will be determined after the research workplans for each RCHSQ's site-specific projects have been approved by ACYF and the workplan for cross-cutting projects has been negotiated by the Consortium and ACYF and approved by ACYF.

A Steering Committee will be formed which consists of all RCHSQ Center Directors as well as representatives from the Head Start Bureau and the Research, Demonstration, and Evaluation Branch of ACYF. The ACYF Federal Project Officer will serve as the chairperson for the Steering Committee. The Steering Committee will advise ACYF on the design, implementation and management of the cross-cutting research projects which are implemented by all RCHSQs in the Consortium; it will also provide a forum for the discussion of issues raised by the Consortium members and ACYF. A contracting firm funded separately by ACYF will provide logistical support for the RCHSQ Consortium and Steering Committee meetings, provide logistical support for outside consultants, and perform the other tasks required to

support the infrastructure of the RCHSQ Consortium.

Minimum Requirements for Project Design: This is a five-year cooperative agreement project in which substantial Federal involvement is anticipated. The specific respective responsibilities of Federal staff and the awardee will be negotiated prior to the cooperative agreement award. In order to successfully compete for an award under this announcement, each RCHSQ applicant must describe an overall research and organizational plan for the requested period of support as outlined below:

1. Research Plan

Each RCHSQ applicant must propose a research workplan which outlines a cohesive and parsimonious set of innovative theory-driven *site-specific* and *cross-cutting* research questions which address the five goals of the RCHSQs. For example, the fourth goal of the RCHSQs is to ''explore linkages among program practices, program quality measures, program performance measures, and observable outcomes for children and families''. Examples of several research questions addressing this goal might be: What are the relationships among established quality indicators, program performance measures, and child and family outcomes, in each Head Start component area? Which measures of quality are associated with which performance measures and outcomes? Are there synergistic effects of program quality? Are there aspects of program quality that cut across component areas?

These illustrative research questions could be addressed within the site-specific workplan, with quality indicators and outcome measures unique to that Center, and/or within the cross-cutting workplan, with standardized measures of quality and outcomes proposed for use across RCHSQs to examine if the outcomes are the same for different Head Start programs serving children and families from a variety of backgrounds and circumstances. Within its proposal, each applicant is expected to propose a list of research questions for both its site-specific research projects and those that may be addressed by the Consortium as a whole. Given the preliminary nature of the proposed cross-cutting research projects, it is expected that the final cross-cutting workplan for the Consortium will be developed based upon the input received from the members of the Steering Committee and participating Head Start programs before it is submitted for final approval by ACYF.

Applicants should justify the selected site-specific and cross-cutting research questions proposed in their application on the basis of the significance of the Head Start quality issues to be addressed, the current state of scientific knowledge, the feasibility of doing research in the designated area(s) (e.g. the availability of measurement instruments, populations to study, etc.), the applicant's experience conducting research in the proposed areas of investigation, and the potential impact of the research on the improvement of Head Start services for children and their families from diverse backgrounds and circumstances.

For each proposed site-specific and cross-cutting study, the applicant should include a brief review and synthesis of the relevant literature and existing scientific knowledge (including their current work in that area); the objectives and significance of the proposed research; research design parameters; proposed study samples; and the timetable for project implementation.

Research workplans for all Research Centers on Head Start Quality must adhere to the following:

a. All applicants must describe the experience of their proposed research staff in conducting collaborative research efforts with Head Start or other community service organizations which serve children and families from low socioeconomic status backgrounds. These descriptions of previous collaborative research efforts should highlight the studies' methodologies, including the research designs, description and sizes of samples, main data collection instruments and strategies, statistical analyses employed, and major findings and publications.

b. All applicants must provide Curriculum Vitae, a statement of relevant current and pending research, training, and service grant and contract support, as well as a letter of commitment, for all relevant Center and Head Start personnel as an appendix.

c. All applicants must provide a listing of the percentage of time that all relevant RCHSQ and Head Start personnel would devote to specific Center-related research duties as an appendix.

d. All applicants must describe the characteristics of the community in which participating Head Start programs are located as well as the characteristics of the currently enrolled Head Start population.

2. Organizational Plan

Each Head Start RCHSQ applicant must outline an overall organizational plan which describes its proposed administrative organization, including its relationship to the participating Head Start grantees. Relationships with other entities (e.g., the local School Board, State Public Health and Mental Health systems) should also be described. The applicant must submit (as an appendix to the application) a letter of agreement signed by the responsible officer of each associated organization (including all participating Head Start grantees and other members of the research planning team), stating that cooperation, services, or other relevant assistance would be available on a continuing basis and at what level such support would be available. Appropriate clearances from each host institution must be submitted which state that the proposed research meets that institution's research review requirements (e.g., Institutional Review Board responsible for activities involving human subjects as provided for under Department of Health and Human Services policy (45 CFR part 46, 42 U.S.C. 289)).

Organizational plans for all Head Start RCHSQ applications must adhere to the following:

a. The Principal Investigator must serve as Director of the Head Start RCHSQ and provide scientific leadership by devoting a significant portion of his/her time to the Center, including time spent on RCHSQ research projects. The Center Director must be responsible for the planning, coordination, and efficient operation of the Center program, the preparation of its budget, and the control of expenditures, staff appointments, and space allocation. Another individual may be assigned responsibility for the day-to-day administration of the Center.

b. Head Start RCHSQs should be multidisciplinary in nature, and include investigators from such disciplines as education, psychology, psychiatry, pediatrics, social work, nursing, epidemiology, statistics, economics, sociology, and public health.

c. Applicants must describe how the research planning team would be assembled, including the specific roles which Head Start staff and parents as well as community leaders would play in the planning and formal approval of all research projects.

d. The applicant must identify any federally funded demonstration projects in which the affiliated Head Start grantees are participating (e.g., the Comprehensive Child Development Program (CCDP), the Head Start/Public School Transition Demonstration).

e. The applicant must provide assurances that the Head Start RCHSQ Director would serve as a member of the

RCHSQ Steering Committee, and would attend *quarterly* Steering Committee meetings in Washington, DC.

f. The applicant must provide assurances that, at a minimum, the Head Start RCHSQ Center Director and one Head Start Program representative would attend *annual* RCHSQ Consortium meetings in Washington, DC, including Head Start's Third National Research Conference to be held on June 20–23, 1996.

g. All applicants must describe an overall budget which includes costs for both site-specific *and* cross-cutting research projects. The proposed budget of each Center must allocate approximately 50 percent of its funds to site-specific and cross-cutting projects, respectively. The final allocation of Center funds to each type of project for a given year will be determined after the research workplans for each RCHSQ's site-specific projects and the workplan for cross-cutting projects have been approved by ACYF.

Project Duration: The length of the project must not exceed 60 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $400,000 for the first 12-month budget period or a maximum of $500,000 per year for the remaining four years of the project period. The Federal share is *inclusive* of indirect costs.

Research Centers on Head Start Quality costs may include the salaries of core personnel (e.g., the Center Director), research expenses, and research resources shared across Center projects such as statistical consultation, data storage and analysis, and equipment; local and national travel associated with Head Start research projects; or any other items directly associated with the cost of conducting the Head Start research efforts under this announcement which are allowable under the Office of Management and Budget (OMB) Circular A–21 (which applies to cooperative agreements with institutions of higher education) and A–122 (which applies to cooperative agreements with nonprofit organizations). In recent revisions to OMB circular A–110 equipment has been defined as tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Head Start RCHSQ funds may not be used to support training activities other than those directly related to the conduct of specific research projects. Funds to support training for student research assistants or Head Start staff should be sought from alternative Head Start or other training or fellowship programs.

Head Start grantees which receive contracts from individual RCHSQs as partnership participants must use these funds solely for the support and conduct of research activities. Funds received for participation in the partnership may be used to pay Head Start staff for any additional work or responsibility that is assumed as a result of this research; local and national travel associated with Head Start RCHSQ research projects; or any other items associated with the cost of the conduct of Head Start RCHSQ research efforts.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that up to four Research Centers on Head Start Quality will be funded in fiscal year 1995.

CFDA: 93.600 Head Start: Head Start Act, as amended.

1.04 Head Start Fellows Program

Eligible Applicants: Universities and Colleges, Foundations, Professional and Non-Profit Agencies and Organizations.

Purpose: The purpose of this priority area is to provide support, through a cooperative agreement, to a partner who will work cooperatively with the Head Start Bureau to design and implement the National Head Start Fellows Program as envisioned in the Head Start Reauthorization of 1994. The primary purpose of the Fellows Program is to support the growth and development of individuals who can make special contributions to the Head Start and early childhood development communities. Therefore, we are seeking applications from organizations with experience and stature in these fields.

Background Information: The Human Services Amendments of 1994 added section 648A(d) to the Head Start Act (42 U.S.C. 9843A) authorizing the Secretary to create a Head Start Fellows program and to publish regulations. (A Notice of Proposed Rulemaking for the program will be published in the near future. This Section closely follows one of the recommendations of the Advisory Committee on Head Start Quality and Expansion. As part of an overall initiative to improve the quality and excellence of local programs, the Advisory Committee proposed several strategies for training and career development for program staff working within Head Start and other early childhood programs. The Advisory Committee suggested that the Department of Health and Human Services should develop a ''fellows program to build outstanding leadership in Head Start and other early childhood programs and to provide opportunities for promising staff from the field to work in national professional organizations, and HHS regional and central offices.'' The Advisory Committee also said that this initiative ''should include the foundation and corporate community as well as leading colleges and universities.'' Both the Advisory Committee and the Head Start Reauthorizing legislation envisioned that this Fellows Program would be part of a long-term quality improvement initiative aimed at upgrading the skills and experience of promising individuals within local programs as well as a strategy for creating a new cadre of leaders who can influence and bring about improvements in policy and practice at a variety of levels in order to positively affect the lives and circumstances of low-income children and their families across the country.

Our intention is to support the design and implementation of this program whose dual goals are: (1) Providing a unique career-building and learning opportunity to mid-career individuals with outstanding leadership potential in Head Start, early childhood development and family support; and (2) enhancing the quality of Head Start and other early childhood development and family support programs as a result of individuals who have had this experience. Overall, this is an exciting and unique opportunity to expose staff from the field to a variety of leadership building developmental activities, issues, and experiences through placements in offices of the Administration for Children and Families, including the Head Start Bureau in Washington DC. and the ten ACF regional offices throughout the country. Placements may also occur in academia and other organizations concerned with children and family service issues. Also important is the opportunity for Federal staff to work with and learn from the valuable experience of practitioners in the field, thereby enriching national policy-making for years to come. The partner in the cooperative agreement should be an organization well-recognized for its work in staff development and training in the field of early childhood development.

One of the goals of the Fellows program is to attract and serve the needs of a diverse pool of experienced candidates who have different levels of educational and different program backgrounds. We anticipate that the Fellows program will attract Head Start directors, component coordinators and key staff, and researchers in the field of

child development and family support. Selection, placement, and support of the Fellows must be managed carefully to tailor experiences to the interests and developmental needs of the Fellow. In addition, the opportunity for creating a climate of support among the Fellows themselves is something that should be carefully crafted and built upon.

The development of the Fellows program would require an initial planning period in order to create the kind of high quality, prestigious program that will achieve its goals and attract the caliber of individuals desired. We envision that the first group of Fellows would be selected and placed by the summer of 1996. We anticipate that approximately 10–15 Fellows would be involved in the program each year with the first year's placements being primarily to the Head Start Bureau in Washington D.C. and to the regional offices of the Administration for Children and Families.

Collaborative activities would include, among other things:

- Conceptualization of the Fellows program and development of the an overall project plan for implementation;
- Training and curriculum design;
- Development of policies and procedures to govern the Head Start Fellows program;
- Establishment of recruitment strategies, screening/selection criteria;
- Management of the application and rating processes and recommendations for selection of individual Fellows;
- Development and implementation of the plan for placement of Fellows;
- Design and conduct of an orientation program and other group learning and supportive activities for the Head Start Fellows;
- Development of policies and procedures regarding the Program; and
- Periodic review of the Head Start Fellows program to ensure that it is achieving the results intended in the Head Start Act.

Minimum Requirements for Program Design: The project under this priority area will be funded as a cooperative agreement in which substantial Federal participation is anticipated. The partner will be expected to work closely with Federal staff. The specific responsibilities of the Federal Staff and the awardee will be negotiated prior to award of the cooperative agreement. In order to successfully compete under this priority area, the applicant must:

- Describe its understanding of the goals and purposes for the Fellows program and its relationship to developing leadership potential for the individuals in the field and for improving the quality of local Head Start and other early childhood programs;
- Describe the mission of their organization as it relates to leadership development within the early childhood and family support fields and how this project fits within that mission;
- Describe the approach and strategies that would be taken to design the program, to recruit potential participants, to support the implementation and maintenance of the Fellows program, and to evaluate the program's effectiveness;
- Describe its experience in training and curriculum design and delivery which relates to programs of the kind envisioned in this announcement;
- Provide letters from individuals and organizations indicating their clear commitment to participate in the project. If the proposed training design requires the technical assistance of other colleges, universities, or nonprofit agencies, the proposal should include letters of commitment assuring their willingness to participate and indicating the roles they would play in the project.
- Provide a staffing plan and vitae for key staff and assurances that the Project Director or another appropriate staff member will attend six meetings annually in Washington, DC. to meet with staff to discuss issues related to Fellows program implementation.
- Provide a budget which delineates the project administration costs versus those expenses which will directly support the Fellows individually and as a group. The budget should include stipends to Fellows. The stipend should be tiered to accommodate a range of education and experience and would parallel the Federal GS 12–14 range. Stipends should include funds to support fringe benefits. The average stipend and total amount of the $1 million of the budget which will be used for stipends for the Fellows should be delineated. It is anticipated that the major portion of the budget would be used for stipends and direct costs of the Fellows. The other expenses to support participation of the Fellows should also be described and budgeted within the $1 million.

Project Duration: The length of the project must not exceed 60 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $1,000,000 for the first 12-month budget period and $1,000,000 for each succeeding 12-month period.

Matching Requirements: No non-Federal match is required.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

CFDA: 93.600 Head Start: Head Start Act as amended.

1.05 Head Start Emergent Literacy Project

Eligible Applicants: Applicants must be private or public nonprofit organizations.

Purpose: The purpose of this priority area is to provide support, through a cooperative agreement(s), to one or two partners who will work cooperatively with the Head Start Bureau in designing and implementing strategies and approaches designed to support and strengthen the emergent literacy activities carried out by Head Start grantees. For the purpose of this announcement, emergent literacy refers to activities that are conducted with young children during the period when they are beginning to become aware of print, to observe and experiment with reading and writing, and to understand the relationship between the written and spoken word.

The cooperative agreement(s) that are awarded should be designed to demonstrate methods for assisting Head Start grantees in reaching higher levels of excellence in preparing children to read through the provision of training to staff and parents in how to more effectively provide emergent learning activities to children in both the classroom and at home.

Background Information: As a national program providing comprehensive developmental services primarily to low-income children and their families, Head Start has undertaken a number of efforts designed to promote literacy among the children and families it serves. Head Start links families with community institutions which operate literacy programs including libraries, local education agencies which offer adult basic education, G.E.D. and adult vocational training programs, and local literacy volunteer programs.

Additionally, grantees have played a key role in the family literacy movement in three basic ways: (1) Increasing Head Start families' access to materials, activities and services which are essential to family literacy development (e.g., acquiring children's books for the home, helping families obtain and use library cards, and promoting family participation in story hours for young children at neighborhood centers); (2) supporting parents in the role of being their child's first teacher by providing encouragement and direction to Head Start families in the provision of activities which will stimulate and sustain their children's interest and potential for future independent success

in literacy activities; and (3) assisting parents as adult learners to recognize and address their own literacy needs by creating environments which are positive, supportive and offer the promise of benefiting both them and their children.

Head Start has also supported several specific literacy initiatives designed to assist local Head Start programs in developing multi-faceted literacy programs.

In 1989, special demonstration grants were competitively awarded to six Head Start grantees to address the issue of family literacy. Building on these grants, beginning in 1992, sixty-five Family Service Centers (FSCs) have been funded. One of three major components of these FSCs has been a family literacy component. Early findings show that Head Start grantees with FSCs have twice the rate of adult participation in GED classes as do grantees with no FSC programs.

Since 1991, $9 million a year has been provided to local Head Start programs to support local literacy activities. All grantees have received a portion of these funds, which support parents' participation in community literacy programs.

In 1992 the Head Start/Library of Congress Interagency Agreement was developed to demonstrate in communities nationwide how libraries which serve young children can plan and work with Head Start grantees to enhance both learning and parent involvement in children's literacy and language development.

Head Start also has collaborated with Even Start since its inception, specifically with its adult literacy program. Additionally, the Head Start Bureau has developed a number of publications and materials for its grantees on recommended practices and resources designed to help programs develop and/or improve their family literacy programs.

Head Start programs have also implemented a wide variety of activities to encourage the emergent literacy of the children served. These activities have included:

- Integrating books into daily curriculum activities and various learning centers;
- Creating an appropriate environment for quiet reading;
- Displaying books in an attractive manner;
- Providing books that are culturally and developmentally appropriate;
- Making and using reading enhancements such as puppets and flannel boards;
- Encouraging parents to read to their children and provide family literacy activities as needed;
- Training parents and staff to select books for Head Start children;
- Increasing the storytelling skills of staff and parents; and
- Encouraging staff and parents to become reading models for children.

While some Head Start programs operate well-developed and multi-faceted emergent literacy programs, other grantees offer programs that focus on only one or a few aspects of emergent literacy. Therefore, in order to improve the quality of the services being provided by Head Start nationwide, strategies are needed which range from the provision of information to all grantees (e.g., general mailings on the implementation of emergent literacy programs and/or on effective emergent literacy activities) to the provision of intensive support and training to programs in need of such assistance.

Minimum Requirements for Project Design: The project(s) under this priority area will be funded as a cooperative agreement(s) in which substantial Federal participation is anticipated. The grantee(s) will be expected to work closely with Federal staff in both the national Head Start Bureau and in the various Regional Offices, including the American Indian Programs and the Migrant Programs Branches in implementing the project(s). The specific responsibilities of Federal staff and the awardee(s) will be negotiated prior to the award of the cooperative agreement(s). In order to successfully compete under this priority area, the applicant must:

- Describe how the project would benefit both the national Head Start program and the local Head Start program and its community, and discuss any relevant research.
- Describe the strategies and approaches that would be designed and tested in terms of their effectiveness in supporting grantees to move toward higher levels of quality and excellence in the area of emergent literacy, including the different levels of service that would be required and how grantees would be selected for each level of service. Specify what approach would be used for supporting grantees who are at various levels of quality.
- Describe how emergent literacy programs would be designed for or could be adapted for use in Head Start programs based in a variety of settings including center-based, home-based, and combination programs as well as programs that are part-day and full-day.
- Describe how multicultural issues would be addressed.
- Describe how all Head Start grantees would be supported in reaching higher levels of quality and excellence including the training, technical assistance and dissemination strategies that would be developed and tested.
- Describe the qualifications of key staff and how their experience is relevant to this project. Vitae for all key staff should be provided.

Program Duration: The length of the project must not exceed 17 months.

Federal Share of the Project: The maximum Federal funding for the project is not to exceed $1,000,000. Applicants are encouraged to provide in-kind contributions to the total project.

Anticipated Number of Projects to be Funded: It is anticipated that up to two projects will be funded.

CFDA: 93.600 Head Start: Head Start Act, as amended.

1.06 Supporting Parent Roles in Children's Learning Environments

Eligible Applicants: Applicants must be public or private nonprofit organizations.

Purpose: The purpose of this priority area is to provide support, through a cooperative agreement(s), to one or more partners who will work cooperatively with the Head Start Bureau in designing and implementing approaches for helping Head Start parents to become more actively involved in their children's learning through the educational use of television, the visual arts and the media.

Background: In today's world, children are exposed to an enormous amount of stimuli, whether the children are in their communities or neighborhoods, or in their own homes, or in the larger world brought to them by television. Television is readily available in nearly every household, and is often turned on for many hours in the day. Children may watch intently or passively, seeing the visual images on the television as they pass by. Parents can help children interpret and use the environment created by television in ways that are appropriate for the child's age and developmental level. Parents are challenged to understand more about child growth and development; the powerful effects television has on a child; how to discern what they can and should control in this environment of television; and how to make appropriate use of this environment in their role as the primary educators of their child and the persons who have a major role in shaping their child's values, goals and aspirations. It is important for parents to know how to use the environment of

television as a set of learning opportunities that contribute to the child's positive growth and development. In order to effectively assist parents in using television, the visual arts and the media as positive learning opportunities for their pre-school age children, resources and materials need to be developed and/or adapted that will help parents:

- Increase their understanding and knowledge of child growth and development in order to gain a better understanding of developmentally appropriate uses of television and media for the preschool age child;
- Use television and the media to strengthen and reinforce their child's learning;
- Engage in constructive learning opportunities with their children when choosing age-appropriate television programming;
- Utilize television and other visual arts and the media in age and content appropriate, interactive ways;
- Become more discerning consumers when their children are exposed to everyday events/activities.

Minimum Requirements for Project Design: The project(s) under this priority area will be funded as a cooperative agreement(s) in which substantial Federal participation is anticipated. The grantee(s) will be expected to work closely with Federal staff in both the national Head Start Bureau and in the various Regional Offices, including the American Indian Programs and the Migrant Programs Branches, in implementing the project(s). The specific responsibilities of Federal staff and the awardee(s) will be negotiated prior to the award of the cooperative agreement(s). In order to successfully compete under this priority area, the applicant must:

- Describe what approaches, strategies and materials would be developed and/or adapted from existing resources to specifically address the needs of Head Start parents and their young children. A description of how both the multicultural and diverse language issues that are present in most Head Start communities would be addressed should also be discussed.
- Describe how pilot tests of these resources and materials would be conducted in selected Head Start sites, including how the participating grantees and families would be selected and the role which staff of the local Head Start programs would play in the implementation of these local pilot tests.
- Describe how, based upon these pilot tests, modifications in the approaches, strategies and materials used would be identified and the necessary modifications made.
- Vitae for all key staff should be provided.

Program Duration: The length of the project should not exceed 17 months.

Federal Share of the Project: The maximum Federal funding for the project is not to exceed $1,000,000. Applicants are encouraged to provide in-kind contributions to the project.

Anticipated Number of Projects to be Funded: It is anticipated that one or two projects will be funded.

CFDA: 93.600 Head Start: Head Start Act, as amended.

Part IV. Instructions for Submitting Applications

A. Availability of Forms

Eligible applicants interested in applying for funds must submit a complete application including the required forms included at the end of this program announcement Appendix A.

In order to be considered for a grant under this announcement, an application must be submitted on the Standard Form 424 (approved by the Office of Management and Budget under Control Number 0348–0043). A copy has been provided. Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their application. Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must also understand that they will be held accountable for the smoking prohibition included within P.L. 103–227, The Pro-Children's Act of 1994. A copy of the **Federal Register** notice which implements the smoking prohibition is included with the forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

B. Application Submission

Applicants submitting proposals should use the following format guidelines: Proposals should be organized according to the evaluation criteria located in Part II of **Federal Register** announcement. For each of the five specified criteria, applicants should provide information in response to the requirements required by the priority area descriptions contained in Part III of this announcement.

One signed original and two copies of the grant applications, including all attachments, are required.

C. Checklist for a Complete Application

The checklist below is for your use to ensure that the application package has been properly prepared.

—One original, signed and dated application plus two copies.

—Attachments/Appendices, when included, should be used only to provide supporting documentation such as administration charts, positions descriptions, resumes, and letters of agreement/support. Please do not include books or video tapes and they are not easily reproduced and are therefore inaccessible to reviewers.

—A complete application consists of the following items in this order:

(1) Application for Federal Assistance (SF 424, REV. 4–88);

(2) Table of Contents;

(3) Budget information-Non-Construction Programs (SF424A&B REV.4–88);

(4) Budget Justification, including subcontract agency budgets;

(5) Project Summary (not to exceed one page);

(6) Application Narrative and Appendices;

(7) Proof of non-profit status. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit organization can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a

copy of the articles of incorporation bearing the seal of incorporation of the State in which the corporation or association is domiciled.

(8) Assurances Non-Construction Programs;

(9) Certification Regarding Lobbying;

(10) Where appropriate, a completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424, REV.4–88.

D. Due Date for the Receipt of Applications

1. *Deadlines:* Applications shall be considered as meeting an announced deadline if they are either:

a. Received on or before the deadline date at the receipt point specified in this program announcement, or

b. Sent on or before the deadline date and received by ACF in time for the independent review. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. *Late applications:* Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. *Extension of deadlines:* ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

E. Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Program and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

* All States and Territories except Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these nineteen jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. A waiver has been sought to allow comments from the SPOC by September 20, 1995.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as an Appendix to this announcement.

E. Closing Date

The closing date for submission of applications is August 16, 1995 as specified in the Dates section at the beginning of this announcement.

Dated: June 23, 1995.

Olivia A. Golden,

Commissioner, Administration on Children Youth and Families.

BILLING CODE 4184–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	*Preapplication*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration

D. Decrease Duration Other *(specify)*:

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184–01–C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.

—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.

—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)—For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Columns (c) through (g.)—*For new applications,* leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Lines 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns(b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Ener the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organization conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

_____

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

_____

TITLE

_____

APPLICANT ORGANIZATION

_____

DATE SUBMITTED

BILLING CODE 4184–01–P

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184–01–C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction,'' provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Signature

_____

Title

_____

Organization

_____

Date

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

BILLING CODE 4184–01–C

EXECUTIVE ORDER 12372—STATE SINGLE POINTS OF CONTACT

Arizona—Mrs. Janice Dunn, ATTN: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas—Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, PO Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California—Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Delaware—Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia—Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW, Suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida—Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia—Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW, Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois—Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana—Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa—Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky—Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine—Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland—Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts—Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan—Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi—Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri—Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson, City, Missouri 65102, Telephone (314) 751–4834

Nevada—Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada, 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire—Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey—Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025.

New Mexico—George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640 FAX (505) 827–3006

New York—New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina—Mrs. Chrys Baggett, Director, Office of the Secretary of Administration N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota—N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio—Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island—Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina—Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

Tennessee—Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas—Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah—Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont—Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia—Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin—Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming—Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam—Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, PO Box 2950, Agana, Guam 96910, Telephone (617) 472–2285

Northern Mariana Islands—State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico—Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, PO Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands—Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750.

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the

provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

[FR Doc. 95–16174 Filed 6–29–95; 8:45 am]

BILLING CODE 4184–01–P

The Regional Offices of the Administration for Children and Families; Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KD, The Regional Offices of the Administration for Children and Families (60 FR 27315), as last amended, May 23, 1995. This reorganization realigns the functions in Region 5 to support their streamlining plan. This Chapter is amended as follows:

1. KD.10 Organization. Regions 1, 3, 4, 7 through X are organized as follows:

Office of the Regional Administrator (KD1A, KD3A, KD4A, KD7A through KDXA)
Office of Financial Operations (KD1B, KD3B, KD4B, KD7B through KDXB)
Office of Family Security (KD1C, KD3C, KD4C, KD7C through KDXC)
Office of Family Supportive Services (DK1D, DK3D, KD4D, KD7D through KDXD)

After the end of KD2.20 Functions, paragraph D but before KD6.10 Organization, insert the following:

2. KD5.10 Organization. The Administration for Children and Families, Region 5, is organized as follows:

Office of the Regional Administrator (KD5A)
Office of Self-Sufficiency Programs (KD5C)
Office of Community Programs (KD5D)

KD5.20 Functions. A. The Office of the Regional Administrator is headed by a Regional Administrator. In addition, the Office of the Regional Administrator has a Deputy Regional Administrator. The Office provides executive leadership and direction to state, county, city, and tribal governments, as well as public and private local grantees to ensure effective and efficient program and financial management. It ensures that these entities conform to federal laws, regulations, policies and procedures governing the programs, and exercises all delegated authorities and responsibilities for oversight of the programs.

The Office takes action to approve state plans and submits its recommendations to the Assistant Secretary for Children and Families concerning state plan disapproval. The Office contributes to the development of national policy based on regional perspectives on all ACF programs. It oversees ACF operations and the management of ACF regional staff; coordinates activities across regional programs; and assures that goals and objectives are carried out. The Office alerts the Assistant Secretary for Children and Families to problems and issues that may have significant regional or national impact. It represents ACF at the regional level in executive communications within ACF, with the HHS Regional Director, other HHS operating divisions, other federal agencies, and public or private local organizations representing children and families.

Within the Office of the Regional Administrator, an administrative staff assists the Regional Administrator and Deputy Regional Administrator. The staff directs the development of regional work plans related to the overall ACF strategic plan; tracks, monitors and reports on regional progress in the attainment of ACF national goals and objectives; and manages special and sensitive projects. It serves as the focal point for public affairs and contacts with the media, public awareness activities, information dissemination and education campaigns in accordance with the ACF Office of Public Affairs and in conjunction with the HHS Regional Director; and assists the Regional Administrator in the management of cross-cutting initiatives and activities among the regional components.

The Office provides day-to-day support for regional administrative functions, oversees the management and coordination of automated systems in the region, and provides data management support to all Regional Office components. Administrative functions include budget planning and execution, facility management, employee relations, and human resources development. Data management responsibilities include the development of automated systems application to support and enhance program, fiscal, and administrative operation, and the compilation and analysis of data on demographic and service trends that assist in monitoring and oversight responsibilities. The Office is responsible for the effective and efficient management of internal ACF automation process and for oversight of state systems projects for ACF programs. In coordination with other Regional Office components, it monitors state systems projects and is the focal point for technical assistance to states and grantees on the development and enhancement of automated systems.

B. The Office of Self-Sufficiency Programs is headed by an Assistant Regional Administrator who reports to the Regional Administrator and consists of: Child Support Enforcement Branch; AFDC/Child Welfare Branch; JOBS/Child Care Branch; and Quality Control Branch.

The Office is responsible for providing centralized program and financial management and technical administration of certain AFC formula and entitlement programs, such as Aid to Families with Dependent Children (AFDC), Jobs Opportunities and Basic Skills Training (JOBS), title IV–A Child Care, Child Care Development and Block Grant, Child Welfare Services, Family Preservations and Support, Foster Care and Adoption Assistance, and Child Abuse and Neglect.

In that regard the Office provides policy guidance to states to assure consistent and uniform adherence to federal requirements governing formula and entitlement programs. The Office reviews cost estimates and reports for ACF entitlement and formula grant programs, and recommends funding levels. It is also responsible for managing all aspects of the AFDC quality control function.

A Financial/Grants Management Officer is located in each branch (other than Quality Control) of the Office of Self-Sufficiency Programs to provide expertise in business and other non-programmatic areas of grants administration and to help ensure that grantees fulfill requirements of law, regulations and administrative policies.

The Office establishes regional financial management priorities; reviews cost allocation plans; and makes recommendations to the Regional Administrator to approve, defer or disallow claims for federal financial participation in ACF formula and entitlement programs. As applicable, it makes recommendations on the

clearance and closure of audits of state and grantee programs, paying particular attention to deficiencies that decrease the efficiency and effectiveness of ACF programs and taking steps to resolve such deficiencies.

The Office represents the Regional Administrator in dealing with ACF central office, states and grantees on all program and financial management policy matters for programs under its jurisdiction. It alerts the Regional Administrator to problems or issues that have significant implications for the programs.

C. The Office of Community Programs is headed by an Assistant Regional Administrator who reports to the Regional Administrator and consists of four Head Start and Youth Branches. The Office is responsible for providing centralized program and financial management and technical administration of certain ACF discretionary programs, such as Head Start and Runaway and Homeless Youth.

A Financial/Grants Management Officer is located in each branch of the Office of Community Programs to provide expertise in business and other non-programmatic areas of grants administration and to help ensure that grantees fulfill requirements of law, regulations and administrative policies.

The Office establishes regional financial management priorities; reviews cost allocation plans; and makes recommendations to the Regional Administrator to approve or disallow costs under ACF discretionary grant programs. The Office issues certain discretionary grant awards based on a review of project objectives, budget projections and proposed funding levels. As applicable, it makes recommendations on the clearance and closure of audits of state and grantee programs, paying particular attention to deficiencies that decrease the efficiency and effectiveness of ACF programs and taking steps to resolve such deficiencies.

The Office represents the Regional Administrator in dealing with ACF central office, states and grantees on all program and financial management policy matters for programs under its jurisdiction. It alerts the Regional Administrator to problems or issues that have significant implications for the programs.

Dated: June 26, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

[FR Doc. 95–16137 Filed 6–29–95; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: AIHA-NIOSH National Technical Workshop on Non-Powered Air-Purifying Particulate Respirators Certified Under 42 CFR part 84.

Times and Dates: 2 p.m.-5 p.m., July 10, 1995; 9 a.m.-5 p.m., July 11, 1995; 9 a.m.-12 noon, July 12, 1995.

Place: American Industrial Hygiene Association, Suite 250, 2700 Prosperity Avenue, Fairfax, Virginia, 22031, telephone 703/849–8888.

Status: Open to the public, limited only by the space available. The meeting room accommodates 50 people.

Purpose: The National Institute for Occupational Safety and Health (NIOSH) and the American Industrial Hygiene Association (AIHA) are jointly sponsoring a workshop to receive technical comment and recommendations on a draft NIOSH user's guideline on non-powered particulate filter respirators that will be certified under new testing and certification procedures contained in 42 CFR part 84.

Matters To Be Discussed: New testing and certification procedures under the recently published NIOSH respirator certification standard (42 CFR 84 [60 FR 30336]) will introduce three new classes (N-, R-, and P-series) of particulate filters for non-powered air-purifying particulate respirators. Each filter type will be certified at three efficiency levels: 95%, 99%, 99.97%. In time, these new filter types will replace dust and mist; dust, fume, and mist; high efficiency, and other types of particulate filters that were certified under 30 CFR 11. To help respirator purchasers and users and respiratory program managers determine which of the new filter types to use in different work environment, NIOSH has prepared a draft user guideline that will be discussed at this joint NIOSH/AIHA workshop. Among other things, the guideline will recommend for the new classes of particulate-filtering respirators provisions APFs that are based on combined filter and faceseal leakage. The meeting will not address issues relating to respiratory protective devices certified under 30 CFR 11.

Contact Person for More Information: Technical information: Walt Ruch or Jeff Bryant, NIOSH, CDC, 4676 Columbia Parkway, Mailstop C–11, Cincinnati, Ohio 45226, telephone 513/533–8251 and COPIES OF THE DRAFT GUIDELINES: Copies of the draft guidelines may be obtained from Kellie Pierson, NIOSH, CDC, 4676 Columbia Parkway, Mailstop C–34, Cincinnati, Ohio 45226, telephone 513/533–8362.

Persons wishing to participate should respond to Anna-Marie DiPasquale, AIHA, Suite 250, 2700 Prosperity Avenue, Fairfax, Virginia, 22031, telephone 703/849–8888.

Dated: June 27, 1995.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–16259 Filed 6–29–95; 8:45 am]

BILLING CODE 4160–19–M

Public Health Service

Agency Forms Undergoing Paperwork Reduction Act Review

Each Friday the Public Health Service (PHS) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the PHS Reports Clearance Office on (202) 690–7100.

The following requests have been submitted for review since the list was last published on June 23.

1. National Health Services Corps Loan Repayment Program and the NHSC State Loan Repayment Program (42 CFR Part 62)—0915–0127—Revision—Approval is requested for three data collections: Health professionals applying to the National Health Service Corps (NHSC) Loan Repayment Program (LRP), and holders of their loans, provide information needed to determine eligibility. NHSC LRP participants provide information annually on training status. States applying to the NHSC State LRP provide information needed to determine eligibility. Respondents: Individuals or households; Business or other-for-profit; State, Local or Tribal Government. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

	No. of respondents	No. of responses/respondent	Average burden/response (hrs)
NHSC/LRP Application.	1,000	1	1.5
Lenders confirmation of loans	1,600	1	.25
42 CFR 62.26 (b) (2) Training status documentation	1	1	1
*42 CFR 62.54 State Loan Repayment Program Application	.....	.....	.....

	No. of respondents	No. of responses/respondent	Average burden/response (hrs)

Estimated Total Annual Burden—1,901 hours

*Burden carried with application—(OMB No. 0937–0189).

2. Community Partnership Demonstration Program National Evaluation: National Evaluation Survey and National Evaluation Survey for Supplemental Awards—New—Results from the National Evaluation Survey and Supplemental Awards Survey will be used by CSAP researchers to help assess the impact of the Community Partnership Demonstration Program on prevention outcomes. The surveys will be completed by partnership grantees. Respondents: Not-for-profit institutions; State, Local or Tribal Government. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

	No. of respondents	No. of responses/respondent	Average burden/response (hrs)
National Evaluation Survey	240	2	1.25
National Evaluation Survey for Supplemental Awards	87	1	0.5

Estimated Total Annual Burden—515 hours

3. Application for the Pharmacology Research Associate Program—0925–0378—Revision—The Pharmacology Research Associate (PRAT) Program will use the applicant and referee information to award opportunities for training and experience in laboratory or clinical investigation to individuals with a Ph.D. degree in pharmacology or a related science, M.D., or other professional degree through appointments as PRAT Fellows at the National Institutes of Health or Food and Drug Administration. The goal of the program is to develop leaders in pharmacological research for key positions in academic, industrial, and Federal research laboratories. Respondents: Individuals or households; Business or other for-profit. Send comments to James Scanlon, Office of the Assistant Secretary for health, Room 737–F, Humphrey Building, 200 Independence Ave., S.W. Washington, D.C. 20201.

	No. of respondents	No. of responses/respondent	Average burden/response (hrs)
Applicants	50	1	2.00
Referees	150	1	.167

Estimated Total Annual Burden—125 hours

4. Tests and Requirements for Certification and Approval of Respiratory Protective Devices—42 CFR 84—0920–0109—Revision—NIOSH in accordance with regulations 42 CFR 84 certificates respirators. To implement these regulations NIOSH provides for the issuance by NIOSH/MSHA of certificates of approval of respirators which meet specified construction performance, & protection requirements. Respondents: Business or other for-profit. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

	No. of respondents	No. of responses/respondent	Average burden/response (hrs)
Reporting: Application (42 CFR 84.11 ...	56	10.5	63.56
Modification (42 CFR 84.35)	56	10.5	79.45
Quality Control Plans (42 CFR 84.41) .	56	10.5	22.70
Recordkeeping 42 CFR 84.43)	56	.....	56.75
Disclosure-Labeling 42 CFR 84.33 ...	56	10.5	1.54
42 CFR 84.257	56	10.5	1.50
42 CFR 84.1103	56	10.5	1.50
Estimated Total Annual Burden hours			—133,474

5. HRSA Noncompeting Training Grant Application, Supplements and Related Regulations—0915–0061—Revision—The Health Resources and Services Administration uses this information to determine the eligibility of grantees to continue their previously approved grant project. The review includes calculation of the amount of each award and the evaluation of progress made. Three new user programs are being added and some changes are being made to program supplemental instructions. Respondents: Not-for-profit institutions; Number of Respondents: 938; Number of Responses per Respondent: 1; Average Burden per Response: 25.5 hrs.; Estimated Total Annual Burden: 23,919 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

6. National Surveillance of Dialysis—Associated Diseases—0920–0033—Revision—This annual survey of hemodialysis facilities is conducted to determine the incidence and trend of hemodialysis-associated diseases so that appropriate control measures can be devised. Respondents: Business of other for-profit; Number of Respondents: 2,340; Number of Responses per Respondent: 1; Average Burden per Response: .58 hr.; Estimated Total Annual Burden: 1,365 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

7. Good Laboratory Practices (GLP) Regulations for NonClinical Studies—21 CFR Part 58 0910–0119—Extension, no change—The GLP regulations are used to assure the quality and integrity of the safety data submitted to FDA in support of the approval of regulated products. The required information will help assure that only safe products are approved for marketing. Respondents: Business or other for-profit; Not-for-profit institutions; Federal Government. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

	No. of respondents	No. of responses/respondent	Average burden/response (hrs)
Reporting—21 CFR 58.35(b)(7)	400	60.2	1
Reporting—21 CFR 58.105(a)(b)	400	5.0	11.8
Reporting—21 CFR 58.113(a)	400	15.4	6.8

	No. of respondents	No. of responses/respondent	Average burden/response (hrs)
Reporting—21 CFR 58.185	400	60.2	27.65
Recordkeeping—21 CFR 58.29(b)	400	20	4.25
Recordkeeping—21 CFR 58.35(b)(1)(2)(3)(c)	400	271	3.36
Recordkeeping—21 CFR 58.63(b)(c)	400	250	5.5
Recordkeeping—21 CFR 58.51(a)(b)(c)	400	300	.14
Recordkeeping—CFR 58.90(c)(g)	400	5.7	.8
Recordkeeping—21 CFR 58.107(d)	400	1	4.25
Recordkeeping—21 CFR 58.120	400	15.4	32.7
Recordkeeping—21 CFR 58.195	400	250	3.9
Estimated Total Annual Burden—1,739,000 hours			

8. Women's Health and Aging Study—0925–0376—Extension—This prospective epidemiologic study examines and follows, for a period of 3 years, 1,000 disabled elderly women living within a defined geographic area in Baltimore City and County. The overall goal of this study is to understand the causes and course of physical disability in women age 65 years and older. Respondents: Individual or households; Number of Respondents: 1,097; Number of Responses per Respondent: 2; Average Burden per Response: 1 hr; Estimated Total Annual Burden: 2,194 hours. Send comments to James Scanlon, Office of the Assistant Secretary for Health, Room 737–F, Humphrey Building, 200 Independence Ave., S.W., Washington, D.C. 20201.

9. Gonococcal Isolate Surveillance Project—0920—0307—Extension, no change—Gonococcal Isolate Surveillance Project (GISP) is a national sentinel surveillance system that monitors the trends in antimicrobial susceptibilities guidelines for the treatment of gonorrhea infections. The respondents are five regional laboratories and 25 sexually transmitted disease clinics. Respondents: Not-for-profit institutions; State, Local or Tribal Government; Number of Respondents: 33; Number of Responses per Respondent: 527.3; Average Burden per Response: 0.597 hr.; Estimated Total Annual Burden: 10,400 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

10. Phase I Implementation of the 1996 NHIS Basic Module—New—The National Health Interview Survey (NHIS) is a multi-purpose health survey, and is a principle source of information on the health of the civilian, household population of the United States. The NHIS is being redesigned for 1996, to implement the use of the Computer Assisted Personal Interview (CAPI) data collection system. This request is for approval of the first phase and the overall description. Respondents: Individuals or households; Number of Respondents: 1,500; Number of Responses per Respondent: 1; Average Burden per Response: 1.51 hr.; Estimated Total Annual Burden: 2,258 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

11. Application Form and Related Forms for the Operation of the National Death Index—Extension, no change—Researchers apply to use the National Death Index (NDI) to determine whether persons in their studies have died and to obtain the states of death and death certificate numbers of the decedents. The five administrative forms are completed by researchers in order to apply for NDI services and to submit records of study subjects for computer matching against the NDI file. Respondents: Not-for-profit institutions; Number of Respondents: 120; Number of Responses per Respondent: 6.5; Average Burden per Response: .291 hr., Estimated Total Annual Burden: 227 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

12. Healthy Schools, Healthy Communities Program National Evaluation: Master Survey Instrument—New—As part of the national evaluation of the Healthy Schools, Healthy Communities Program, surveys will be conducted of elementary, middle, and high school students in grantee schools and comparison schools, and parents of surveyed elementary school students. Data on health services utilization, health problems, and risk behaviors will be collected. Respondents: Individuals or households. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

	No. of respondents	No. of responses/respondent	Average burden/response (hrs)
Survey of Students	10,900	2	.69
Survey of Parents	4,300	2	.29
Estimated Total Annual Burden—17,620 hours			

13. Mammography Facilities—Requirements for Accrediting Bodies and Quality Standards and Certification Requirements—21 CFR Part 900—New—These Interim Rules implement the accreditation, quality standards, and certification provisions of the Mammography Quality Standards Act of 1992. The intent of these interim rules is to assure safe, reliable, and accurate mammography on a nationwide level. Respondents: Business or other-for-profit. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

	No. of respondents	No. of responses/respondent	Average burden/response (hrs)
21 CFR 900—Reporting	12,887	1	17.73
21 CFR 900—Recordkeeping	50,000	1	1
Estimated Total Annual Burden—82,810 hours			

14. Women's Health Initiative: Modifications for An Investigation of Oral Hard Tissue Status in Relation to Skeletal Bone Mineral Density Measures and Osteoporosis—0925–0414—Revision—This study will evaluate the results of a study of tooth and oral bone status for a sample of 1,000 women

enrolled in the Observational Component of the Women's Health Initiative at a Bone Density Center and correlate these measures with skeletal bone density assessments. Results will provide critical information for addressing the oral health problems confronting peri- and post-menopausal women. Respondents: Individuals or households; Business or other for-profit. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

	No. of respondents	No. of responses/respondent	Average burden/response (hrs)
Currently approved	51,250	1.66	1.114
Oral Hard Tissue Modification: Cohort Women	1,000	1	47
Their Dentists	150		.084
Estimated Total Annual Burden—94,916 hours			

15. Community Partnership Demonstration Program Surveys: Student Survey and Adult Community 0930–0161—Revision—The Youth and Adult surveys collect alcohol and drug abuse data from communities that participate in the Community Partnership Demonstration Program (CPDP) as well as control communities, to provide estimates of the efficiency of the CPDP. Findings will be used by the Center for Substance Abuse Prevention and Congress to maximize the efficiency of future prevention programs. Respondents: Individuals or households. Send comments to James Scanlon, Office of the Assistant Secretary for Health, Room 737–F, Humphrey Building, 200 Independence Ave., S.W., Washington, D.C. 20201.

	No. of respondents	No. of responses/respondent	Average burden/response (hrs)
Student Survey	23,057	1	0.7
Adult Community Survey	8,644	1	0.7
Estimated Total Annual Burden—22,190 hours			

16. Joint FDA/NHLBI Health and Diet Survey, Cycle VI—New—A population sample of consumers will be interviewed about knowledge, awareness and practices with respect to ongoing health promotional initiatives in order to evaluate the impact of these initiatives and discern continuing educational needs. Respondents; Individuals or households. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

	No. of respondents	No. of responses/respondent	Average burden/response (hrs)
Screener	4,400	1	.017
Main Survey	4,000	1	.45
Estimated Total Annual Burden—1,875 hours			

17. Human Tissue Intended for Transplantation, 21 CFR 1270—0910–0302—Revision—This rule requires certain infectious disease testing, donor screening, and recordkeeping to help prevent the transmission of AIDS and hepatitis through human tissue used in transplantations. Respondents: Business or other for-profit; Not-for-profit institutions. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

	No. of respondents	No. of responses/respondent	Average burden/response (hrs)
Recordkeeping: 21 CFR 1270.7(b)	400	1	48
21 CFR 1270.9(a) & .11(a)	400	1	3.75
21 CFR 1270.11(b)	400	1	3.50
Estimated Total Annual Burden—22,100 hours			

18. Pretest of Round 2 and HIPS for the Household Components (FAMES) of the National Medical Expenditures Survey (NMES–3)—New—This includes a pretest of Round 2 of a household survey and a pretest of a survey of employers and health insurance providers identified in the Round 1 pretest household interviews. No interviews will be administered in the Round 2 pretest. The purpose of the round is to collect signed permission forms from persons in sample households. These forms are needed to field the survey of employer and health insurance providers (HIPS). HIPS will verify and supplement health insurance coverage details reported by household respondents. Respondents: Individuals or housholds; Business or other for-profit. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

	No. of respondents	No. of responses/respondent	Average burden/response (hrs)
Round 2 Pretest for NMES–3 Household Component	218	1	.509
HIPS Pretest	307	1	.495
Estimated Total Annual Burden—263 hours.			

19. Requirement for a Special Permit to Import Cynomolgus, African Green, or Rhesus Monkeys into the United States—0920–0263—Extension, no change—Under a special permit arrangement importers must submit a plan to CDC for the importation/quarantine of specific monkeys covered. Information requested is necessary to make public health decisions, evaluate compliance with the standards, and determine the adequacy of measures taken to prevent exposure of persons and animals during importation. Respondents: Business or other for-profit; Not-for-profit institutions; Number of Respondents: 20; Number of Responses per Respondent: 5; Average Burden per Response: 0.14 hr.; Estimated Total Annual Burden: 14 hours. Send comments to James Scanlon, Office of the Assistant Secretary for Health, Room 737–F, Humphrey Building, 200 Independence Ave., S.W., Washington, D.C. 20201.

20. Pilot Test of Revisions to the National Health Service Corps Scholarship Program—New—A Pilot Study is proposed of a consolidated application and interview process for the National Health Service Corps (NHSC) Scholarship Program. The revised application process is designed to improve the Agency's ability to identify applicants likely to remain in primary care after they have completed their service obligation. Respondents: Individuals or housholds; Number of Respondents: 300; Number of Responses per Respondent: 1; Average Burden per Response: 3.2 hrs.; Estimated Total Annual Burden: 963 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive office Building, Room 10235, Washington, D.C. 20503.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the individual designated.

Dated: June 27, 1994.

James Scanlon,

Director, Data Policy Staff, Office of the Assistant Secretary for Health and PHS Reports Clearance Officer.

[FR Doc. 95–16198 Filed 6–29–95; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–43]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact David Pollack, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to David Pollack at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Elaine Sims, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 355–3475; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; (These are not toll-free numbers).

Dated: June 23, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 06/30/95

Suitable/Available Properties

Buildings (by State)

Georgia

Bldg. T–305, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219510103
Status: Excess
Comment: 2340 sq. ft., 1-story, most recent use—hosp. clinic, needs rehab, off-site use only

Bldg. T–312, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219510104
Status: Excess
Comment: 3813 sq. ft., 1-story, most recent use—trg. aids center, needs rehab, off-site use only

Bldg. T–1137, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219510105
Status: Excess
Comment: 77 sq. ft., 1-story, most recent use—dispatch bldg., needs rehab, off-site use only

Bldg. T–1414
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219510106
Status: Excess
Comment: 2000 sq. ft., 1-story, most recent use—office, needs rehab, off-site use only

Hawaii

Bldg. S–108
Helemano Military Reservation
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219510101
Status: Excess
Comment: 2400 sq. ft., 1-story, needs rehab, most recent use—fire station, off-site use only

Bldg. S–107
Helemano Military Reservation
Wahiawa HI 96786–

Landholding Agency: Army
Property Number: 219510102
Status: Excess
Comment: 2000 sq. ft., 1-story, most recent use—office, off-site use only

Illinois

WARD Army Reserve Center
1429 Northmoor Road
Peoria Co: Peoria IL 61614–3498
Landholding Agency: Army
Property Number: 219430254
Status: Unutilized
Comment: 2 bldgs. on 3.15 acres, 36451 sq. ft., reserve center & warehouse, presence of asbestos, most recent use—office/storage/training

Stenafich Army Reserve Center
1600 E. Willow Road
Kankakee Co: Kankakee IL 60901–2631
Landholding Agency: Army
Property Number: 219430255
Status: Unutilized
Comment: 2 bldgs.—reserve center & vehicle maint. shop on 3.68 acres, 5641 sq. ft., most recent use—office/storage/training, presence of asbestos

Iowa

U.S. Army Reserve Center
705 E. Taylor Street
Creston Co: Adams IA 50801–4040
Landholding Agency: Army
Property Number: 219430253
Status: Unutilized
Comment: 6500 sq. ft., 1-story structure on 2 acres, most recent use—office/storage/training

Kansas

Bldgs. T–2018, T–2120, T–2338
Fort Riley
Ft. Riley KS 66442–
Landholding Agency: Army
Property Number: 219510099
Status: Unutilized
Comment: 3059–3278 sq. ft., 1–2 story, needs rehab, presence of asbestos, most recent use—office/storage

Bldgs. S–403, S–401
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219510100
Status: Excess
Comment: 2978 sq. ft., 1-story, presence of asbestos, most recent use—hosp. clinic, off-site use only

Kentucky

Bldg. 2219
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219510098
Status: Unutilized
Comment: 2500 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—storage

Missouri

Bldg. T403
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510107
Status: Excess
Comment: 5818 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. T460
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510108
Status: Excess
Comment: 5428 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. T464
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510109
Status: Excess
Comment: 5310 sq. ft., 2-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. T590
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510110
Status: Excess
Comment: 3263 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. T1246
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510111
Status: Excess
Comment: 1144 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. T1362
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510112
Status: Excess
Comment: 2360 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. T1907
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510113
Status: Excess
Comment: 7670 sq. ft., 2-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. T1908
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510114
Status: Excess
Comment: 2284 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. T2385
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510115
Status: Excess
Comment: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. T3007
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510116
Status: Excess
Comment: 4687 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. T3008
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510117
Status: Excess
Comment: 4687 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. T3010
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510118
Status: Excess
Comment: 4687 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. T3011
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510119
Status: Excess
Comment: 4687 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

South Carolina

Bldg. 10–749
Fort Jackson
Ft. Jackson Co: Richland, SC 29207–
Landholding Agency: Army
Property Number: 219510137
Status: Excess
Comment: 2257 sq. ft., 1-story, wood frame, needs rehab, most recent use—religious education facility, off-site use only

Bldg. 2516
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510138
Status: Excess
Comment: 520 sq. ft., 1-story, wood frame, most recent use—admin., off-site use only

Bldg. 5412
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510139
Status: Excess
Comment: 3900 sq. ft., 1-story, wood frame, needs rehab, most recent use—admin., off-site use only

Bldg. 10–763
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510140
Status: Excess
Comment: 2257 sq. ft., 1-story, wood frame, needs rehab, most recent use—admin., off-site use only

Bldg. 10–700
Fort Jackson

Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510141
Status: Excess
Comment: 2268 sq. ft., 1-story, wood frame, needs rehab, most recent use—enlisted dining, off-site use only

Bldg. 10–707
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510142
Status: Excess
Comment: 2257 sq. ft., 1-story, wood frame, needs rehab, most recent use—enlisted dining facility, off-site use only

Bldg. 10–714
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510143
Status: Excess
Comment: 2500 sq. ft., 1-story, wood frame, needs rehab, most recent use—enlisted dining, off-site use only

Bldg. 10–721
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510144
Status: Excess
Comment: 2512 sq. ft., 1-story, wood frame, needs rehab, most recent use—enlisted dining, off-site use only

Bldg. 10–742
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510145
Status: Excess
Comment: 2257 sq. ft., 1-story, wood frame, needs rehab, most recent use—enlisted dining, off-site use only

Bldg. 10–756
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510146
Status: Excess
Comment: 2257 sq. ft., 1-story, wood frame, needs rehab, most recent use—enlisted dining, off-site use only

Bldg. 10–701
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510147
Status: Excess
Comment: 1170 sq. ft., 1-story, wood frame, needs rehab, most recent use—detached day room, off-site use only

Bldg. 10–708
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510148
Status: Excess
Comment: 1170 sq. ft., 1-story, wood frame, needs rehab, most recent use—detached day room, off-site use only

Bldg. 10–715
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510149
Status: Excess
Comment: 1170 sq. ft., 1-story, wood frame, needs rehab, most recent use—detached day room, off-site use only

Bldg. 10–722
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510150
Status: Excess
Comment: 1170 sq. ft., 1-story, wood frame, needs rehab, most recent use—detached day room, off-site use only

Bldg. 10–729
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510151
Status: Excess
Comment: 1170 sq. ft., 1-story, wood frame, needs rehab, most recent use—detached day room, off-site use only

Bldg. 10–736
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510152
Status: Excess
Comment: 1170 sq. ft., 1-story, wood frame, needs rehab, most recent use—detached day room, off-site use only

Bldg. 10–743
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510153
Status: Excess
Comment: 1170 sq. ft., 1-story, wood frame, needs rehab, most recent use—detached day room, off-site use only

Bldg. 10–750, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510154
Status: Excess
Comment: 1170 sq. ft., 2-story, wood frame, needs rehab, most recent use—detached day room, off-site use only

Bldg. 10–757, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510155
Status: Excess
Comment: 1170 sq. ft., 1-story, wood frame, needs rehab, most recent use—detached day room, off-site use only

Bldg. 10–762, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510156
Status: Excess
Comment: 1108 sq. ft., 1-story, wood frame, needs rehab, most recent use—detached day room, off-site use only

Bldg. 10–764, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510157
Status: Excess
Comment: 1170 sq. ft., 1-story, wood frame, needs rehab, most recent use—detached day room, off-site use only

Bldg. 7530, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510158
Status: Excess
Comment: 3196 sq. ft., 1-story, wood frame, needs rehab, most recent use—storage, off-site use only

Bldg. 7531, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510159
Status: Excess
Comment: 3196 sq. ft., 1-story, wood frame, needs rehab, most recent use—storage, off-site use only

Bldg. 10–716, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510160
Status: Excess
Comment: 1040 sq. ft., 2-story, wood frame, needs rehab, most recent use—hdqtrs. bldg., off-site use only

Bldg. 10–723, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510161
Status: Excess
Comment: 1008 sq. ft., 2-story, wood frame, needs rehab, most recent use—hdqtrs. bldg., off-site use only

Bldg. 10–730, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510162
Status: Excess
Comment: 1040 sq. ft., 2-story, wood frame, needs rehab, most recent use—hdqtrs. bldg., off-site use only

Bldg. 10–737, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510163
Status: Excess
Comment: 1040 sq. ft., 2-story, wood frame, needs rehab, most recent use—hdqtrs. bldg., off-site use only

Bldg. 10–744, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510164
Status: Excess
Comment: 1040 sq. ft., 2-story, wood frame, needs rehab, most recent use—hdqtrs. bldg., off-site use only

Bldg. 10–751, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510165
Status: Excess
Comment: 800 sq. ft., 1-story, wood frame, needs rehab, most recent use—hdqtrs. bldg., off-site use only

Bldg. 10–758, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510166
Status: Excess
Comment: 1040 sq. ft., 2-story, wood frame, needs rehab, most recent use—hdqtrs. bldg., off-site use only

Bldg. 10–765, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army

Property Number: 219510167
Status: Excess
Comment: 1040 sq. ft., 2-story, wood frame, needs rehab, most recent use—hdqtrs. bldg., off-site use only

Bldg. 9606, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510168
Status: Excess
Comment: 1144 sq. ft., 1-story, wood frame, needs rehab, most recent use—criminal investigation bldg., off-site use only

Bldg. 9607, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510169
Status: Excess
Comment: 4720 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–703, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510170
Status: Excess
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–704, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510171
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–705, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510172
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–706, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510173
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–710, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510174
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–711, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510175
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–712, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510176
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–713, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510177
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–718, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510178
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–719, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510179
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–720, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510180
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–724, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510181
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–725, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510182
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–726, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510183
Status: Unutilized
Comment: 4720 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–727, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510184
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–731, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510185
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–732, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510186
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–733, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510187
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–735, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510188
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–738, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510189
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–739, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510190
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10-740, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510191
Status: Unutilized
Comment: 2257 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–741, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510192
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–745, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510193
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–746, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510194
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–747, Fort Jackson
Ft. Jackson Co: Richland SC 29207–

Landholding Agency: Army
Property Number: 219510195
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–748, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510196
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–752, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510197
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–753, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510198
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–754, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Propery Number: 219510199
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–755, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Propery Number: 219510200
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–759, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Propery Number: 219510201
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–760, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Propery Number: 219510202
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–761, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Propery Number: 219510203
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–766, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Propery Number: 219510204
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–767, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Propery Number: 219510205
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Bldg. 10–768, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Propery Number: 219510206
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only

Virginia

Bldg. 555
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Propery Number: 219510129
Status: Unutilized
Comment: 34 sq. ft., 1-story, concrete block, needs repair, most recent use—general storage

Bldg. T–87
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Propery Number: 219510130
Status: Unutilized
Comment: 395 sq. ft., 1-story, needs repair, most recent use—general storage

Bldg. T–262
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Propery Number: 219510131
Status: Underutilized
Comment: 1168 sq. ft., 1-story, wood frame, needs repair, most recent use—general storage

Bldg. T–265
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Propery Number: 219510132
Status: Underutilized
Comment: 636 sq. ft., 1-story trailer, needs repair, most recent use—office

Washington

Bldg. 9771, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Propery Number: 219510133
Status: Unutilized
Comment: 3965–5220 sq. ft., 2-story, needs rehab, most recent use—family housing used as storage, off-site use only

Bldg. 9772, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Propery Number: 219510134
Status: Unutilized
Comment: 3965–5220 sq. ft., 2-story, needs rehab, most recent use—family housing used as storage, off-site use only

Bldg. 9773, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Propery Number: 219510135
Status: Unutilized
Comment: 3965–5220 sq. ft., 2-story, needs rehab, most recent use—family housing used as storage, off-site use only

Bldg. 9774, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219510136
Status: Unutilized
Comment: 3965–5220 sq. ft., 2-story, needs rehab, most recent use—family housing used as storage, off-site use only

Land (by State)

Louisiana

Land—Louisiana AAP
Doyline Co: Webster LA 71023–
Landholding Number: 219430133
Status: Underutilized
Comment: 3 acres, most recent use—excess vehicle storage, secure area with alternate access

New York

Galeville Army Training Site
Shawangunk Co: Ulster NY 12589–
Landholding Agency: Army
Property Number: 219510128
Status: Underutilized
Comment: 621.05 acres, improved w/inactive runway, airfield & taxiway, potential utilities, 234 acres is wetlands and habitat for threatened species

Unsuitable Properties

Buildings (by State)

Alabama

Bldgs. 3206, 3208, 5675, 5676, 5683, S–3421
U.S. Army Missile Command
Redstone Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 219520032
Status: Unutilized
Reason: Secured Area

Bldgs, 5014, 5015, 5016
Ft. Rucker
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 219520050
Status: Excess
Reason: Extensive deterioration

Bldgs. 60102, 60104, 60105, 60118, 60125, 60126
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 219520057
Status: Excess
Reason: Extensive deterioration

Bldgs, 60106, 60112
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 219520058
Status: Excess
Reason: Extensive deterioration

Alaska

Bldg. T–00160
Ft. Greely
Ft. Greely AK 99790–

Landholding Agency: Army
Property Number: 219520064
Status: Excess
Reason: Extensive deterioration

California

Bldg. 43; Bunkers 41, 42, 45, 46, 47
Santa Rosa High Frequency Radio Station
Santa Rosa CA
Landholding Agency: Army
Property Number: 219520036
Status: Excess
Reason: Secured Area

Bldgs. 29, 39, 73, 154, 155, 193, 204, 257
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219520040
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1103, 1131
Parks Reserve Forces Training Area
Dublin Co: Alameda CA 94568–5201
Landholding Agency: Army
Property Number: 219520056
Status: Unutilized
Reason: Extensive deterioration

Colorado

Bldg. 219
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520005
Status: Excess
Reason; Within 2000 ft. of flammable or explosive material

Bldg. 251
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520006
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 208
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520007
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 146
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520008
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 147
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520009
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 145
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520010
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 144
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520011
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 143
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520012
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 142
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520013
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 209
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520014
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 207
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520015
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 149
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520016
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 204
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520017
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 148
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520018
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 122
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520019
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 252
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520020
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 206
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520021
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 217
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520022
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 141
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520023
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 134
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520024
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 131
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520025
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 213
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219520026
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Georgia

Bldg. P–8063
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219520027
Status: Excess
Reason: Other
Comment: latrine

Bldg. T–922
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219520028
Status: Excess
Reason: Within airport runway clear zone

Bldgs. T–707, T–709, T–713, T–714, T–715, T–716, T–717, T–914, T–922

Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219520041
Status: Excess
Reason: Extensive deterioration

Bldgs. 91606, 91608, 91618, 19620, 91701
Ft. Gordon
Fort Gordon Co: Richmond, GA 30905–
Landholding Agency: Army
Property Number: 219520044
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T–830, T–1048, T–1072, T–5701, T–8062
Ft. Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219520045
Status: Excess
Reason: Extensive deterioration

Bldgs. 156, 157, 4100, 4058, 4068, 4069
Ft. Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219520047
Status: Unutilized
Reason: Extensive deterioration

Bldg. 20803
Ft. Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219520067
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4065, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219520150
Status: Unutilized
Reason: Extensive deterioration

Hawaii

Bldgs. P–0150, S–01507, P–01508
Wheeler Army Airfield
Wahiawa HI 996786–
Landholding Agency: Army
Property Number: 219520003
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldgs. S–D1054, T–513–D,
T–782, T–2231, T–2233, T–2234
Schofield Barracks
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219520038
Status: Unutilized
Reason: Secured Area

Bldg. S–822
Wheeler Army Airfield
Wahiawa HI –
Landholding Agency: Army
Property Number: 219520039
Status: Excess
Reason: Secured Area

Bldgs. 6077, T–1503
Ft. Shafter
Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219520046
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–3002
Schofield Barracks
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219520063
Status: Excess
Reason: Extensive deterioration

Bldg. T–2232
Schofield Barracks, 8th Street
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219520065
Status: Unutilized
Reason: Other
Comment: Not accessible by road

Bldg. 1177, FISC Pearl
Pearl Harbor Co: Honolulu HI 96760–
Landholding Agency: Navy
Property Number: 779520032
Status: Excess
Reason: Extensive deterioration

Bldg. 1178, FISC Pearl
Pearl Harbor Co: Honolulu HI 96760–
Landholding Agency: Navy
Property Number: 779520033
Status: Excess
Reason: Extensive deterioration

Indiana

Bldgs. 103, 224B, 727, 729, 3001, 3022, 3023, 3221, 3251, 6015, 6050, 6051, 7711, 9011, 9111, 9910-Newport Army
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219520033
Status: Excess
Reason: Secured Area

Bldgs. 122B, 227a, 227b, 227c, 227d, 722J, 729d, 729E, 3063, 9811, 9812
Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219520042
Status: Excess
Reason: Extensive deterioration

Iowa

Bldgs. 27, 340
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219520002
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldgs. 734, 737
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219520053
Status: Excess
Reason: Extensive deterioration

Bldg. 237
Iowa Army Ammunition Plant
Middleton Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219520070
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 59
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219520151
Status: Excess
Reason: Extensive deterioration

Kansas

Bldgs. 354, T–993, T–2044
Ft. Riley
Ft. Riley KS 66442–
Landholding Agency: Army
Property Number: 219520043
Status: Unutilized
Reason: Extensive deterioration

Kentucky

Bldgs. 06115, 06120, 06121
Ft. Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219520055
Status: Excess
Reason: Extensive deterioration

Louisiana

Ft. Polk
5919 & 5925 Bennett Street
Ft. Polk Co: Vernon LA 71459–7100
Landholding Agency: Army
Property Number: 219520059
Status: Unutilized
Reason: Extensive deterioration

Maryland

Bldg. 4721
Aberdeen Proving Ground
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219520060
Status: Unutilized
Reason: Extensive deterioration

New Jersey

Bldg. 91F
Military Ocean Terminal
Bayonne Co: Hudson NJ 07002–
Landholding Agency: Army
Property Number: 219520149
Status: Unutilized
Reason: Secured Area, Extensive deterioration

North Carolina

Bldg. X–5882
Ft. Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219520004
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 2–3209
Ft. Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219520035
Status: Underutilized
Reason: Secured Area

Bldgs. 8–2668, A–5954
Ft. Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219520048
Status: Excess
Reason: Extensive deterioration

Pennsylvania

Bldg. T–10–41
Ft. Indiantown Gap
Annville Co: Lebanon PA 17003–5019
Landholding Agency: Army

Property Number: 219520049
Status: Excess
Reason: Extensive deterioration

Bldg. P–24–30
Ft. Indiantown Gap
Annville Co: Lebanon PA 17003–5019
Landholding Agency: Army
Property Number: 219520066
Status: Underutilized
Reason: Extensive deterioration

Bldg. T–10–35
Ft. Indiantown Gap
Annville Co: Lebanon PA 17003–5019
Landholding Agency: Army
Property Number: 219520068
Status: Underutilized
Reason: Extensive deterioration

Bldg. P–24–30
Ft. Indiantown Gap
Annville Co: Lebanon PA 17003–5019
Landholding Agency: Army
Property Number: 219520069
Status: Underutilized
Reason: Extensive deterioration

Bldg. T–4–51
Ft. Indiantown Gap
Annville Co: Lebanon PA 17003–5019
Landholding Agency: Army
Property Number: 219520071
Status: Underutilized
Reason: Extensive deterioration

Bldg. T–4–52
Ft. Indiantown Gap
Annville Co: Lebanon PA 17003–5019
Landholding Agency: Army
Property Number: 219520072
Status: Underutilized
Reason: Extensive deterioration

Tennessee

Bldgs. 403–2, 404–2, 709
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN
Landholding Agency: Army
Property Number: 219520031
Status: Excess
Reason: Secured Area

Bldg. W–57
Milan Army Ammunition Plant
Milan Co: Carroll TN 38358–
Landholding Agency: Army
Property Number: 219520034
Status: Excess
Reason: Secured Area

Texas

Bldgs. P–6087, T–941
Ft. Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219520054
Status: Surplus
Reason: Extensive deterioration

Bldg. 57012
Ft. Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219520061
Status: Excess
Reason: Extensive deterioration

Virginia

Bldgs. S0001, S0002, S0003, S0005
Hampton USAR Center
Hampton VA 23666–
Landholding Agency: Army
Property Number: 219520029
Status: Unutilized
Reason: Secured Area

Bldgs. S0006, S0007, S0008, S0009
Butler Farms USAR Center
Hampton VA 23666–
Landholding Agency: Army
Property Number: 219520030
Status: Unutilized
Reason: Secured Area

Bldgs. 3013–00, B3013–00, C3013–00
Radford Army Ammunition Plant
Radford VA 24141–
Landholding Agency: Army
Property Number: 219520037
Status: Excess
Reason: Secured Area

Bldg. 171
Ft. Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219520051
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 2013–00, B2013–00
Radford Army Ammunition Plant
Radford VA 24141–
Landholding Agency: Army
Property Number: 219520052
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–11115
Ft. Lee
Ft. Lee VA 23801–
Landholding Agency: Army
Property Number: 219520062
Status: Unutilized
Reason: Extensive deterioration

[FR Doc. 95–15909 Filed 6–29–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–5420–00–G502; NMLC 064596]

Roswell District, New Mexico; Issuance of Recordable Disclaimer of Interest for Mineral Estate in New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent to Issue a Recordable Disclaimer of Interest.

SUMMARY: The United States of America, pursuant to Section 315(a)(1) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1745, does hereby give notice of its intention to disclaim and release to the Trustees of the George M. and Janice W. Slaughter Revocable Trust, all interest in the mineral estate in the real property described below:

New Mexico Principal Meridian

T. 5 S., R. 25 E.
Sec. 27, SW¼SW¼;
Sec. 28, SE¼SE¼.

Containing 80 acres more or less in Chaves County.

This land was reconveyed to the United States by Warranty Deed from George M. and Janice W. Slaughter in a private exchange on August 12, 1952. The Warranty Deed contained no reservation of the mineral estate. Two subsequent Warranty Deeds were issued on September 2, 1952 and February 18, 1954, both of which reserved the mineral estate to George M. and Janice W. Slaughter. In order to remove any cloud on the title that may have arisen from these Warranty Deeds, the United States intends to issue a Recordable Disclaimer of Interest for the mineral estate.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments may do so in writing to the State Director, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115. Any adverse comments will be evaluated by the New Mexico State Director, BLM, who may vacate or modify this action and issue a final determination. In the absence of any action by the State Director, this action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115, 505–438–7593.

Dated: June 22, 1995.

Richard A. Whitley,

Deputy State Director, Resource Planning, Use and Protection.

[FR Doc. 95–16013 Filed 6–29–95; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 16, 1995, Roberts

Laboratories, Inc., 4 Industrial Way West, Eatontown, New Jersey 07724, made application to the Drug Enforcement Administration to be registered as an importer of Propiram (9649) a basic class of controlled substance in Schedule I.

The firm will import Propiram in bulk for product development.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 31, 1995.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applications for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823 (a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: June 19, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–16124 Filed 6–29–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

June 27, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (P.L. 96–511). Copies may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley, (202) 219–5095. Comments and questions about the ICRs listed below should be directed to Ms. O'Malley, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs. Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10325, Washington, DC 20503, (202) 395–7316.

Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Type of Review: Revision.

Agency: Occupational Safety and Health Administration.

Title: Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment.

OMB Number: 1218–0011.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 300.

Estimated Time Per Respondent: .35 hours.

Total Burden Hours: 381.

Description: To ensure that shipyard personnel do not enter confined spaces that contain oxygen deficient toxic or flammable atmospheres, qualified (competent) personnel must test such spaces. This information provides individuals deemed qualified by employers to conduct such tests, plus results and instructions.

Type of Review: Revision.

Agency: Occupational Safety and Health Administration.

Title: Occupational Exposure to Noise.

OMB Number: 1218–0048.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 311,094

Estimated Time Per Respondent: 6.7 hours.

Total Burden Hours: 1,915,151.

Description: The Occupational Exposure to Noise Standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to noise. The Standard requires that employers must establish and maintain a training and compliance program, including exposure monitoring and medical surveillance records. These records are used by employees, physicians, employers and the Occupational Safety and Health Administration (OSHA) to determine the effectiveness of the employers' compliance efforts. Also the standard requires that OSHA have access to various records to ensure that employers are complying with the provisions of the occupational exposure to noise.

Type of Review: Reinstatement without change, of a previously approved collection for which approval has expired.

Agency: Occupational Safety and Health Administration.

Title: Construction Oxygen and Toxic Test.

OMB Number: 1218–0054.

Frequency: Once per shift; occasionally several times per shift when applicable.

Affected Public: Business or other for-profit.

Number of Respondents: 14,060.

Estimated Time Per Respondent: 3 minutes.

Total Burden Hours: 703.

Description: This regulation requires that whenever internal combustion engine powered equipment exhausts in enclosed spaces, tests shall be made and recorded to see that employees are not exposed to unsafe concentrations of toxic gases or oxygen deficient atmospheres.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Agency: Occupational Safety and Health Administration.

Title: Underground Construction Air Quality Record.

OMB Number: 1218–0067.

Frequency: On occasion (the estimated 250 respondents annually that are required to keep records under this standard take three air samples a day over a 250-workday year).

Affected Public: Business or other for-profit.

Number of Respondents: 250.

Estimated Time Per Respondent: 3 minutes.

Total Burden Hours: 46,876.

Description: This regulation requires that a record of all air quality tests be maintained above ground at the worksite and be made available to the Secretary of Labor upon request. The record shall include the location, date,

time, substance and amount monitored. Records of exposures to toxic substances shall be retained in accordance with section 1910.20 of this regulation. All other air quality tests records shall be retained until completion of the project.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Agency: Occupational Safety and Health Administration.

Title: Diving Related Recordkeeping.

OMB Number: 1218–0069.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 3,000.

Estimated Time Per Respondent: 37 hours.

Total Burden Hours: 111,005

Description: These requirements/records are directed toward assuring the safety/health of divers exposed to hyperbaric conditions during and after undersea activities. Additionally, the safety standards requiring records pertaining to diving equipment are intended to bring about a safe workplace and, thus, better assure the occupational safety/health of divers.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Agency: Occuptional Safety and Health Administration.

Title: Organizational Statement for Fire Brigades.

OMB Number: 1218–0075.

Frequency: One-time.

Affected Public: Business or other for-profit.

Number of Respondents: 2,750.

Estimated Time Per Respondent: 5 minutes.

Total Burden Hours: 269.

Description: The organizational statement describes what the fire brigade is expected to do, and will help employees understand their duties as fire brigade members. It will also inform compliance officers of the type of fire fighting which will be performed, and if the level of training is consistent with that type of fire fighting.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Agency: Occupational Safety and Health Administration.

Title: Construction Posting Requirements—Emergency Phone Number and Floor Load Limits.

OMB Number: 1218–0093.

Frequency: (a) Once every other year (b) Twice every year.

Affected Public: Business or other for-profit.

Number of Respondents: (a) 417,953; (b) 2,925=420,878.

Estimated Time Per Respondent: (a) 2 minutes; (b) 30 minutes.

Total Burden Hours: (a) 6,966; (b) 1,900=8,866.

Description: (a) Construction work is hazardous at times and the injury and severity rates are high in spite of efforts to abate the identifiable hazards, there is a need to obtain medical attention or provide ambulance and hospital service as expeditiously as possible. It is, therefore, necessary to require that the phone numbers be conspicuously posted on construction job sites.

(b) During construction of certain multi-story buildings or structures, it is necessary to store materials on elevated floors. In order to make sure they do not overload the floor, the Occupational Safety and Health Administration requires the load limits to be posted in pounds per square foot with signs in the storage area. This should eliminate the hazard of building collapse due to overloading and thus protect employers from the hazard.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Agency: Occupational Safety and Health Administration.

Title: Concrete and Masonry Construction.

OMB Number: 1218–0095.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 70,000.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 11,667

Description: Construction firms engaged in the erection of concrete formwork are required to have a copy of the formwork plans or drawings at the job site for use by the contractor when erecting the formwork. Failure to follow drawings could cause a collapse.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Agency: Occupational Safety and Health Administration.

Title: Construction Crane or Derrick Annual Inspection Records.

OMB Number: 1218–0113.

Agency Number: OSHA 229.

Frequency: Annually.

Affected Public: Business or other for-profit.

Number of Respondents: 22,600.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 218,090.

Description: This regulation requires that a thorough, annual inspection of the hoisting machinery be made by a competent person, or by a government or private agency recognized by the Department of Labor. The employer shall maintain a record of the dates and results of inspections for each hoisting machine and piece of equipment.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Agency: Occupational Safety and Health Administration.

Title: Construction Crane Rating Chart Limitation Instructions.

OMB Number: 1218–0115.

Frequency: Annually for rerating; on occasion when there is a modification of crane or derrick.

Affected Public: Business or other for-profit.

Number of Respondents: 19.

Estimated Time Per Respondent: 65 hours per employee (depending on the size of the crane, it can take between 2–10 employees).

Total Burden Hours: 4,550.

Description: This regulation requires the use of appropriately documented capacity charts and machine configuration limitations to ensure the employee a safe place to work for any field constructed crane or derrick. The documentation is used by the employers, engineers, supervisors and equipment operator employees to determine machine ability to perform the lifting and placing of assigned loads with the piece of equipment involved.

Type of Review: Extension.

Agency: Occupational Safety and Health Administration.

Title: Electrical Standards for Construction.

OMB Number: 1218–0130.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 30,249.

Estimated Time Per Respondent: 1.04 hours.

Total Burden Hours: 31,459.

Description: This collection of information requires employers to maintain a written description of an assured equipment grounding conductor program.

Type of Review: Revision.

Agency: Occupational Safety and Health Administration.

Title: Occupational Exposure to Toxic Substances in Laboratories.

OMB Number: 1218–0131.

Agency Number:

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 173,465.

Estimated Time Per Respondent: 1.6 hours.

Total Burden Hours: 10,752.

Description: The laboratory standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to laboratories. The standard requires that employers must establish and maintain a training and compliance program including exposure monitoring and medical surveillance records. These records are used by employees, physicians, employers and the Occupational Safety and Health Administration (OSHA) to determine the effectiveness of the employers' compliance efforts. Also, the standards requires that OSHA has access to various records to ensure that employers are complying with the disclosure provisions of the laboratory standard.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Agency: Occupational Safety and Health Administration.

OMB Number: 1218–0133.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 486.

Estimated Time Per Response: .60 hours.

Total Burden Hours: 38,104.

Description: The asbestos standard and its information collection requirements is to provide protection for employees from the adverse health affects associated with occupational exposure to asbestos. The standard requires that employers must establish and maintain a training and compliance program, including exposure monitoring and medical surveillance records. In addition, building owners and employers must inform employees about the existence of asbestos containing material and potential asbestos containing material in the facility. Required information is used by employees, physicians, employers and the Occupational Safety and Health Administration (OSHA) to ensure employees are being protected from exposure to asbestos. Also, the standard requires that OSHA have access to various records to ensure that employers are complying with the disclosure provisions of the asbestos standard.

Type of Review: Reinstatment, without change, of a previously approved collection for which approval has expired.

Agency: Occupational Safety and Health Administration

Title: Design of Cave-in Protection Systems

OMB Number: 1218–0137.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 1,150.

Estimated Time Per Respondent: .5 hours.

Total Burden Hours: 69,581.

Description: Design of cave-in protection systems are needed by employers in the construction industry and the Occupational Safety and Health Administration compliance officers to ensure that cave-in protection systems are designed, installed, and used in a manner to protect employees adequately.

Type of Review: Revision.

Agency: Occupational Safety and Health Administration.

Title: Formaldehyde.

OMB Number: 1218–0145.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 1,447,187.

Estimated Time Per Respondent: .50 hours.

Total Burden Hours: 721,053.

Description: This regulation requires employers to train employees about the hazards of formaldehyde, monitor employee exposure, provide medical surveillance, and maintain accurate records of employee exposure. These records will be used by employers, employees, physicians, and the Government to ensure that employees are not harmed by exposure to formaldehyde.

Type of Review: Reinstatement, without change, of a previously approved collected for which approval has expired.

Agency: Occupaitonal Safety and Health Administration.

Title: Crane or Derrick Suspended Personnel Platforms.

OMB Number: 1218–0151.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 623.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 104.

Description: This regulation requires that personnel platforms shall be conspicuously posted with a plate or other permanent marking which indicates the eight of the platform and its rated load capacity or maximum intended load.

Type of Review: Revision.

Agency: Occupational Safety and Health Administration.

Title: Occupational Exposure to Cadmium (Construction).

OMB Number: 1218–0186.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 10,000.

Estimated Time Per Respondent: .15 hours.

Total Burden Hours: 46,395.

Description: The cadmium standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to cadmium. The standard requires that employers must establish and maintain a training and compliance program, including exposure monitoring and medical surveillance records. These records are used by employees, physicians, employers and the Occupational Safety and Health Administration (OSHA) to determine the effectiveness of the employers' compliance efforts. Also, the standard requires that OSHA have access to various records to ensure that employers are complying with the disclosure provisions of the cadmium standard.

Type of Review: Revision.

Agency: Occupational Safety and Health Administration.

Title: Fall Protection Plan.

OMB Number: 1218–0197.

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 100,000.

Estimated Time Per Respondent: 1 hour to develop a plan; 5 minutes for compliance inspection access.

Total Burden Hours: 100,080.

Description: The employer is required to develop a fall protection plan when it is infeasible or creates a greater hazard to use conventional fall protection systems. The plan must be disclosed to the Occupational Safety and Health Administration compliance officer at the time of an inspection if requested.

Type of Review: New.

Agency: Occupational Safety and Health Administration.

Title: Process Safety Management of Highly Hazardous Chemicals.

OMB Number: 1218–0new.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 24,939.

Estimated Time Per Respondent: 5,419 hours.

Total Burden Hours: 135,145,622.

Description: These requirements/ records are directed toward assuring

that the hazards associated with processes using highly hazardous chemicals are managed. They establish procedures for process safety management that will protect employees by preventing or minimizing the consequences of chemical accidents involving highly hazardous chemicals.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: ERISA Procedures 75–1 (Exemption Procedures Under Section 408(a)).

OMB Number: 1210–0060.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 299.

Estimated Time Per Respondent: Application preparation = 25 hours each = 7,475 hours; Preparation and distribution = 1.5 hours each = 138 hours; Reproduction and Mailing = 5 minutes = 838 hours.

Total Burden Hours: 7,996

Description: This regulation provides a procedures for applications filed for exemptions from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA).

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: Prohibited Transaction Class Exemption 82–63.

OMB Number: 1210–0062.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 36,490.

Estimated Time Per Repondent: 5 minutes.

Total Burden Hours: 3,041.

Description: This class exemption allows the payment of compensation under certain conditions for the provision by an employee benefit plan fiduciary or securities lending services to the plan.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: Prohibited Transaction Class Exemption—80–83.

OMB Number: 1210–0064.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 1.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 1.

Description: This class exemption exempts from the prohibited transaction provisions of the Employee Retirement Income Security Act (ERISA), certain transactions involving an employee benefit plan's purchase of securities which may aid the issuer of the securities to reduce or retire indebtedness to a party in interest.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Interstate Arrangement for Combining Employment and Wages.

OMB Number: 1205–0029

Agency Number: ETA 586.

Affected Public: State, Local or Tribal Government.

Activity	Frequency	Respondents	Average time per respondent
Ongoing	Quarterly	53	4 hours.
Reprogramming	One-time	53	80 hours.
Total burden hours: 5,088.			

Description: This report provides data necessary to measure the scope and effect of the program for combining wages and employment and to monitor the performance of States in payment and wage transfer.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Benefit appeals Report.

OMB Number: 1205–0172.

Agency Number: ETA 5130.

Affected Public: State, Local or Tribal Government

Version	Frequency	Affected public	Respondents	Average time per respondent
Regular	Monthly	States	53	3 hours.
Extended Benefits	Six times	States	2	3 hours.
Total burden hours: 1,944.				

Description: This report is used to monitor the benefit appeals process, to evaluate compliance with the appeals promptness standard and to develop plans for remedial action. The report is also needed for budgeting and for workload figures.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Disaster Payment Activities Under the ''Stafford Disaster, Relief Act''.

OMB Number: 1205–0234.

Agency Number: ETA 90–2.

Frequency: 6 monthly reports.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 50.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 75.

Description: Unemployment, compensation claims, financial management and data on disaster unemployment assistance (DUA) activity are needed for timely program evaluation necessary for competent administration of Section 410 and 423 of the Stafford Disaster Relief Act (Act). Workload items are also used with fiscal reports to estimate the cost of administering the Act.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Evaluation of the Impact of Job Corps on Participant's Postprogram Labor Market and Related Behaviors—Follow-up Questionnaire and Process Study Protocols.

OMB Number: 1205–0new.

Activity	Affected public	Number of administrations	Average time per respondent
Impact Study:			
12-month	Applicant	11,665	45 minutes.
30-month	Applicant	10,345	45 minutes.
48-month	Applicant	9,052	45 minutes.
Process Study:			
Process Visit	Various JC Staff	23	54 hours.
Interviews	Admission Counselors	500	1 hour.
Mail Survey	Center Directors	108	6.5 hours

Total Burden Hours: 25,810.

Description: Data from follow-up questionnaires will be used to measure impacts of Job Corps on participants' earnings and related behavior. Data from process protocols will be used to describe the Job Corps Program. Data from both sources will be used to estimate the benefits and costs of Job Corps.

Type of Review: New.

Agency: Employment Standards Administration.

Title: Application of Federal Certificate of Age.

OMB Number: 1205–0083.

Agency Number: WG–14.

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; State, Local or Tribal Government.

Number of Respondents: 250.

Estimated Time Per Respondent: 30 seconds.

Total Burden Hours: 44.

Description: Section 3 (1) of the Fair Labor Standards Act provides that an employer may protect against unwitting employment of oppressive child labor by obtaining a certificate of age certifying that a youth meets the Fair Labor Standards Act minimum age requirements. Form WH–14 is an application for a Federal Certification of Age.

Type of Review: New.

Agency: Employment Standards Administration.

Title: Bona Fide Thrift or Savings Plan (29 CFR 547).

OMB Number: 1215–0119.

Agency Number: WG–14.

Frequency: On occasion.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 2,016,000.

Estimated Time Per Respondent: Recordkeeping only.

Total Burden Hours: 1 hour.

Description: Section 7 (e)(3)(b) of the Fair Labor Standards Act permits the exclusion from an employee's regular rate of pay for payments on behalf of an employee to a ''bona fide'' thrift or savings plan. Regulations, 29 CFR 547, set forth the requirements for a bona fide thrift or savings plan.

Type of Review: New.

Agency: Employment Standards Administration.

Title: Requirements of a Bona Fide profit-Sharing Plan or Trust (29 CFR 549).

OMB Number: 1215–0122.

Frequency: On occasion.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 864,000.

Estimated Time Per Respondent: Recordkeeping only.

Total Burden Hours: 1.

Description: Section 7 (e)(3)(b) of the Fair Labor Standards Act permits the exclusion from an employee's regular rate of pay for payments on behalf of an employee to a ''bona fide'' profit-sharing plan. Regulations, 29 CFR 549, set forth the requirements for a bona fide profit-sharing plan.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 95–16134 Filed 6–29–95; 8:45 am]

BILLING CODE 4510–26–P

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is

published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination Nos. IL950024, IL950031, IL950033, IL950035, IL950036, IL950037, IL950038, IL950039, IL950044, IL950045, IL950048, IL950050, IL950054, IL950055, IL950056, IL950057, IL950066, IL950070, IL950072, IL950074, IL950076, IL950080, IL950083, IL950085, IL950086, IL950088, IL950091, IL950093, IL950097 dated February 10, 1995.

Agencies with construction projects pending, to which Wage Decisions IL950031, IL950035, IL950036, IL950037, IL950044, IL950054, IL950056, IL950070, IL950083, IL950088, IL950091, and IL950097 would have been applicable, should utilize Wage Decision IL950026. Agencies with construction projects pending, to which Wage Decisions IL950024, IL950033, IL950038, IL950039, IL950045, IL950048, IL950050, IL950055, IL950057, IL950066, IL950072, IL950074, IL950076, IL950080, IL950085, IL950086, and IL950093 would have been applicable, should utilize Wage Decision IL950023. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

VOLUME I

Connecticut
CT950001 (Feb. 10, 1995)
CT950003 (Feb. 10, 1995)
CT950004 (Feb. 10, 1995)
CT950008 (Feb. 10, 1995)
Massachusetts
MA950008 (Feb. 10, 1995)
MA950016 (Feb. 10, 1995)
MA950018 (Feb. 10, 1995)
MA950020 (Feb. 10, 1995)
Maine
ME950025 (Feb. 10, 1995)
New Hampshire
NH950017 (Feb. 10, 1995)
New Jersey
NJ950002 (Feb. 10, 1995)
New York
NY950002 (Feb. 10, 1995)
NY950013 (Feb. 10, 1995)
Rhode Island
RI950006 (Feb. 10, 1995)

VOLUME II

District of Columbia
DC950001 (Feb. 10, 1995)
Delaware
DE950008 (Feb. 10, 1995)
Maryland
MD950034 (Feb. 10, 1995)
MD950036 (Feb. 10, 1995)
MD950048 (Feb. 10, 1995)
MD950053 (Feb. 10, 1995)
Pennsylvania
PA950009 (Feb. 10, 1995)
PA950037 (Feb. 10, 1995)
PA950050 (Feb. 10, 1995)
PA950060 (Feb. 10, 1995)
Virginia
VA950025 (Feb. 10, 1995)
VA950104 (Feb. 10, 1995)
VA950105 (Feb. 10, 1995)

VOLUME III

Georgia
GA950009 (Feb. 10, 1995)
GA950053 (Feb. 10, 1995)
GA950065 (Feb. 10, 1995)
Florida
FL950001 (Feb. 10, 1995)
FL950009 (Feb. 10, 1995)
FL950012 (Feb. 10, 1995)

VOLUME IV

Illinois
IL950023 (Feb. 10, 1995)
IL950026 (Feb. 10, 1995)
IL950089 (Feb. 10, 1995)
Ohio
OH950001 (Feb. 10, 1995)
OH950002 (Feb. 10, 1995)
OH950003 (Feb. 10, 1995)
OH950012 (Feb. 10, 1995)
OH950014 (Feb. 10, 1995)
OH950024 (Feb. 10, 1995)
OH950026 (Feb. 10, 1995)
OH950028 (Feb. 10, 1995)
OH950029 (Feb. 10, 1995)
OH950032 (Feb. 10, 1995)
OH950034 (Feb. 10, 1995)

VOLUME V

Iowa
IA950005 (Feb. 10, 1995)
IA950024 (Feb. 10, 1995)
IA950031 (Feb. 10, 1995)
Kansas
KS950018 (Feb. 10, 1995)
KS950019 (Feb. 10, 1995)
KS950020 (Feb. 10, 1995)
KS950022 (Feb. 10, 1995)
Missouri
MO950001 (Feb. 10, 1995)
Texas
TX950001 (Feb. 10, 1995)
TX950018 (Feb. 10, 1995)
TX950081 (Feb. 10, 1995)
TX950114 (Feb. 10, 1995)

VOLUME VI

California
CA950004 (Feb. 10, 1995)
CA950024 (Feb. 10, 1995)
Utah
UT950034 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4640.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 23rd day of June 1995.

Alan L. Moss,

Director, Division of Wage Determination.

[FR Doc. 95–15854 Filed 6–29–95; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Audit Guide for LSC Recipients and Auditors

AGENCY: Legal Services Corporation.

ACTION: Proposed guideline; extension of comment period.

SUMMARY: This notice extends for an additional 20 days the comment period on the proposed Legal Services Corporation (LSC) Audit Guide for Recipients and Auditors that was published on May 24, 1995 (60 FR 25762–27567). On June 12, 1995, LSC published a notice (60 FR 30901) extending the original 30-day comment period for an additional ten days. Respondents are now given a 60-day period from the original date of publication to comment.

DATES: Comments should be received in writing on or before July 24, 1995. Late comments will be considered to the extent practicable. Where possible, comments should reference applicable paragraph numbers in the proposed revision. To facilitate conversion of the comments in computer format for analysis, respondents are asked to send a copy of the comments on either a 3.5 or 5.25 inch diskette in ASCII format.

ADDRESSES: Comments should be submitted in writing to the Office of Inspector General, Legal Services Corporation, 750 First St., NE., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Karen M. Voellm, Chief of Audits (202) 336–8830.

Dated: June 27, 1995.

Victor Fortuno,

General Counsel.

[FR Doc. 95–16170 Filed 6–29–95; 8:45 am]

BILLING CODE 7050–01–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 94–4A]

Cable Compulsory License: Specialty Station List

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of final specialty station list.

SUMMARY: The Copyright Office is publishing a new and final list of specialty stations that sent us affidavits claiming they meet specialty station requirements. A specialty station is a commercial broadcast television station that meets requirements set by the Federal Communications Commission under its former distant signal carriage rules at 47 CFR 76.5(kk)(1981). The Office will refer to the list to check broadcast station status when cable systems file semi-annual statements of account under 17 U.S.C. 111.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Fax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Under the cable compulsory license, section 111 of title 17, United States Code, carriage of a specialty station [1] by a cable operator allows the operator to pay copyright fees at a lower rate than the 3.75% rate that is usually incurred by an operator when it carries non-permitted signals. Specialty station status is determined by reference to former regulations of the Federal Communications Commission at 47 CFR 76.5(kk)(1981). The FCC no longer determines whether or not a station qualifies as a specialty station, however, the Copyright Office updates the specialty station list periodically, because the list remains relevant in connection with the filing of statements of account by cable operators.

The Office created its first specialty station list in 1990, and stated that it would compile new lists at approximately three year intervals. Early this year we published a request for affidavits from stations claiming current specialty station status. 60 FR 4639 (January 24, 1995). We extended the filing deadline from March 27, 1995, to April 24, 1995, in order to accommodate specialty station owners who had been unaware that we were updating the list. 60 FR 1826 (April 1995). On May 9, 1995, we published a list of stations whose affidavits we had received, and requested that any party objecting to any claim to specialty station status submit comments to the Office stating its objections. 60 FR 24659 (May 9, 1995). We received no comments or objections.The Office now publishes a final list of specialty stations, effective July 1, 1995, for the accounting period 1995/2 and thereafter. Copyright Office examiners will refer to this final specialty station list in examining cable systems' claims on their statements of account that particular broadcast stations they carry are specialty stations. Although the Office does not officially place stations filing affidavits after the closing date on the specialty station list, we will accept these affidavits without objection. These late claims will be placed in the public file in the Licensing Division for reference purposes. If a cable system claims specialty station status for a station not on this list, the examiner will determine whether the station has filed an affidavit since the closing date for submitting claims (April 24, 1995).

Final List of Specialty Stations: Call Letters and Cities of License [2]

CBAFT Moncton, New Brunswick, Canada
CBEFT Windsor, Ontario, Canada
CBFT Montreal, Quebec, Canada
CBGAT Matane, Quebec, Canada
CBKFT Regina, Saskatchewan, Canada
CBLFT Toronto, Ontario, Canada
CBOFT Ottawa, Ontario, Canada
CBST Sept-Iles, Quebec, Canada
CBUFT Vancouver, British Colombia, Canada
CBVT Quebec City, Quebec, Canada
CBWFT Winnipeg, Manitoba, Canada
CBXFT Edmonton, Alberta, Canada
CFCM Quebec City, Quebec, Canada
CFER Rimouski, Quebec, Canada
CFTM Montreal, Quebec, Canada
CHEM Trois-Rivieres, Quebec, Canada
CHLT Sherbrooke, Quebec, Canada
CJPM Chicoutimi, Quebec, Canada
CKRN Rouyn, Quebec, Canada
CKRS Jonquiere, Quebec, Canada
CKRT Riviere-Du-Loup, Quebec Canada
CKSH Sherbrooke, Quebec, Canada
CKTM Trois-Rivieres, Quebec, Canada
KCHF Santa Fe, New Mexico
KCSO Modesto, California
KDTV San Francisco, California
KFCB Concord, California
KFTV Hanford/Fresno, California
KLUZ Albuquerque, New Mexico
KLXV San Jose, California

[1] The FCC defined a specialty station as ''a commercial television broadcast station that generally carries foreign-language, religious, and/or automated programming in one-third of the hours of an average broadcast week and one-third of weekly prime-time hours.'' 47 CFR 76.5(kk)(1976).

[2] Several listings in today's Notice reflect corrections made to more accurately show the markets stations serve. These include KFTV Hanford/Fresno, California (formerly listed as KFTV Fresno, California), KVEA Corona/Los Angeles, California (formerly listed as KVEA Corona, California), WNJU New York, New York/Linden, New Jersey (formerly listed as WNJU Linden, New Jersey), WOCD Amsterdam, New York, (formerly listed as WOCD Amsterdam, Pennsylvania), WPCB Greensburg/Pittsburgh, Pennsylvania (formerly listed as WPCB Greensburg, Pennsylvania), and WPGD Hendersonville, Tennessee (formerly listed as WPGD Nashville, Tennessee).

KMEX Los Angeles, California
KMPX Decatur, Texas
KMSG Sanger, California
KNSO Merced, California
KNXT Visalia, California
KSBI Oklahoma City, Oklahoma
KSTS San Jose, California
KTFH Conroe, Texas
KTMD Galveston, Texas
KTSF San Francisco, California
KTVW Phoenix, Arizona
KUVN Garland, Texas
KVDA San Antonio, Texas
KVEA Corona/Los Angeles, California
KWEX San Antonio, Texas
KWHY Los Angeles, California
KXLN Rosenberg, Texas
W09BI Tallahassee, Florida
W17AB Tallahassee, Florida
W64BW Arlington, Virginia
W65BX Springfield, Massachusetts
W69AY Gainesville, Florida
WACX Leesburg, Florida
WBUY Memphis, Tennessee
WCFC Chicago, Illinois
WCLF Clearwater, Florida
WCTD Miami, Florida
WECN Naranjito, Puerto Rico
WEFC Roanoke, Virginia
WEJC Lexington, North Carolina
WELF Lookout Mountain, Georgia
WFCT Bradenton, Florida
WFGC Palm Beach, Florida
WGBO Joliet, Illinois
WHBR Pensacola, Florida/Mobile, Alabama
WHTN Murfreesboro, Tennessee
WIRS Yauco, Puerto Rico
WKAQ San Juan, Puerto Rico
WKBS Altoona, Pennsylvania
WLCN Madisonville, Kentucky
WLFG Grundy, Virginia
WLTV Miami, Florida
WLYJ Clarksburg, West Virginia
WMBC Newton, New Jersey
WMCF Montgomery, Alabama
WMPV Mobile, Alabama
WNJU New York, New York/Linden, New Jersey
WOCD Amsterdam, New York
WPCB Greensburg/Pittsburgh, Pennsylvania
WPGD Hendersonville, Tennessee
WPMC Jellico, Tennessee
WRXY Tice, Florida
WSCV Ft. Lauderdale, Florida
WSFJ Newark, Ohio
WSNS Chicago, Illinois
WSWS Opelika, Alabama
WTGI Wilmington, Delaware
WTGL Cocoa, Florida
WTLK Rome, Georgia
WTWS New London, Connecticut
WXTV Secaucus, New Jersey

Dated: June 27, 1995.

Marilyn J. Kretsinger,

Acting General Counsel.

[FR Doc. 95–16119 Filed 6–29–95; 8:45 am]

BILLING CODE 1410–31–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Submission of Proposed Information Collections to OMB

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed information collections submitted to OMB for approval.

SUMMARY: The National Archives and Records Administration (NARA) is giving notice that the proposed collections of information described in this notice have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act and 5 CFR part 1320. Public comment is invited on these collections.

DATES: Comments should be submitted by August 14, 1995.

ADDRESSES: Copies of the proposed information collections and supporting documentation can be obtained from the Policy and Planning Division (PIRM–POL), 8601 Adelphi Road, Room 3200, College Park, MD 20740–6001. Telephone requests may be made to (301) 713–6730, extension 226.

Written comments should be sent to Director, Policy and Planning Division (PIRM–POL), National Archives and Records Administration, 8601 Adelphi Road, Room 3200, College Park, MD 20740–6001. A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at (301) 713–6730.

The following proposed information collections have been submitted to OMB:

1. *National Archives Order for Copies of Veterans Records (NATF Form 80).*

Description: The information collection is a form used to request a search for and place an order for copies of military service files, pension application files, and bounty land files more than 75 years old in the custody of the National Archives.

Purpose: The information is used to search for the requested file and, if found, make copies and bill the respondent for them; or to notify the respondent of unsuccessful searches.

Frequency of response: On occasion.

Number of respondents: 100,000.

Reporting hours per response: 10 minutes.

Annual reporting burden hours: 16,667 hours.

2. *National Archives Order for Copies of Ship Passenger Arrival Records (NATF Form 81).*

Description: The information collection is a form used to request a search for and place an order for copies of pages from ship passenger arrival files in the custody of the National Archives.

Purpose: The information is used to search for the requested file and, if found, make copies and bill the respondent for them; or to notify the respondent of unsuccessful searches.

Frequency of response: On occasion.

Number of respondents: 10,000.

Reporting hours per response: 10 minutes.

Annual reporting burden hours: 1,667 hours.

3. *National Archives Order for Copies of Census Records (NATF Form 82).*

Description: The information collection is a form used to request a search for and place an order for copies of pages from population census records in the custody of the National Archives.

Purpose: The information is used to search for the requested file and, if found, make copies and bill the respondent for them; or to notify the respondent of unsuccessful searches.

Frequency of response: On occasion.

Number of respondents: 14,000.

Reporting hours per response: 10 minutes.

Annual reporting burden hours: 2,333 hours.

4. *National Archives Order for Copies of Eastern Cherokee Applications (NATF Form 83).*

Description: The information collection is a form used to request a search for and place an order for copies of Eastern Cherokee applications to the U.S. Court of Claims, 1906–1909 in the custody of the National Archives.

Purpose: The information is used to search for the requested file and, if found, make copies and bill the respondent for them; or to notify the respondent of unsuccessful searches.

Frequency of response: On occasion.

Number of respondents: 600.

Reporting hours per response: 10 minutes.

Annual reporting burden hours: 100 hours.

5. *Request for and Record of Pass (NA Form 6006).*

Description: The information collection is a form used by NARA volunteers and contractor employees to obtain a NARA building pass.

Purpose: The information is used to provide a record of individuals who are issued a NARA building pass. The building pass is part of NARA's facility security program.

Frequency of response: On occasion. Contractors and volunteers must complete the form when they begin their employment or volunteer service at a NARA facility and when their building pass expires if there are significant changes to the information provided initially. Contractor passes expire annually; volunteer passes expire after 5 years.

Number of respondents: 1,266.

Reporting hours per response: 3 minutes

Annual reporting burden hours: 64 hours

6. Request Pertaining to Military Records (SF 180); Questionnaire about Military Service (NA Form 13075).

Description: The information collection is the information that must be provided when requesting information from or copies of documents from a military service record stored at the National Personnel Records Center (NPRC) to allow NPRC to locate the record and respond to the request. Standard Form 180 is the principal form used to obtain information but other forms and letters may be used. NA Form 13075 is a supplemental form furnished to approximately 10 percent of the respondents to obtain additional information to search alternative sources to supply the requested information.

Purpose: The information is used to locate the requested record and to determine the releasibility of the record under Department of Defense rules.

Frequency of response: On occasion.

Number of respondents: 713,400.

Reporting hours per response: 5 to 30 minutes.

Annual reporting burden hours: 209,616 hours.

7. Automated researcher application.

Description: The information collection is a researcher application form completed by individuals who wish to use original records in the National Archives, a regional archives, or a Presidential Library operated by NARA. The paper application form (NA Forms 14003 and 14003A) has been approved by OMB under control number 3095–0016. This submission is to request approval of an automated researcher application which will replace the paper version.

The automated researcher application is currently available in the College Park, MD National Archives facility; its use will be expanded to the other locations over the next 24 months.

Purpose: The information is used by NARA as a security measure to screen individuals who will have access to original records, to identify which types of records the individual should use, and to allow further contact with the individual if additional records of interest are found or if problems with the records are discovered.

Frequency of response: Every three years at the National Archives and regional archives facilities; annually at Presidential libraries until the automated application is in use. More than 90 percent of respondents complete the form only one time.

Number of respondents: 30,000.

Reporting hours per response: 8 minutes.

Annual reporting burden hours: 4,000 hours.

8. Item Approval Request List.

Description: The information collection is a form used to order reproductions of motion picture, audio, and video holdings in the custody of the Office of the National Archives.

Purpose: The information is used by NARA to verify the availability of the requested items for reproduction and, when returned by the vendor, for pulling the copying masters for reproduction.

Frequency of response: On occasion.

Number of respondents: 1,500.

Reporting hours per response: 15 minutes.

Annual reporting burden hours: 375 hours.

Dated: June 22, 1995.

John W. Carlin,

Archivist of the United States.

[FR Doc. 95–16083 Filed 6–29–95; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–295]

Commonwealth Edison Company; Zion Nuclear Power Station, Unit 1; Environmental Assessment and Findings of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Facility Operating License No. DPR–39, issued to Commonwealth Edison Company (the licensee), for operation of Zion Nuclear Power Station, Unit No. 1, located in Lake County, Illinois.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application dated May 12, 1995. The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), to the extent that a one-time schedular extension would permit rescheduling of the next Type A test for Zion Nuclear Power Station, Unit 1, to the refueling outage currently scheduled to start in March 1997. Appendix J is undergoing revisions and if the revised Appendix J requirements are approved and issued prior to the March 1997 refueling outage, the next Unit 1 Type A test will be performed in accordance with the revised requirements.

The Need for the Proposed Action

The current containment integrated leakage rate testing requirements, pursuant to 10 CFR Part 50, Appendix J, Section III.D.1.(a), are that after the preoperational leak rate test, a set of three Type A tests must be performed at approximately equal intervals during each 10-year inservice inspection period. Furthermore, the third test of each set must be conducted when the plant is shut down for the 10-year inservice inspection. The most recent Type A test was conducted in March 1992, approximately 40 months ago. On March 31, 1993, Zion, Unit 1, was granted an exemption from the requirement of 10 CFR Part 50, Appendix J, that the third Type A test for the second 10 year inservice inspection interval be conducted while shutdown for the 10 year inservice inspections. That one-time exemption effectively decoupled the Type A testing frequency from the 10 year inservice inspection interval and allowed the next Type A test to be scheduled independent of the end of the second 10 year interval. As a result of that exemption, Zion Unit 1 was to perform its next Type A test during the September 1995 refueling outage (RFO). The exemption is needed to allow a longer interval between the Zion, Unit 1, Type A tests, which will result in a considerable cost-savings to the licensee.

Environmental Impacts of the Proposed Action

The proposed one-time exemption would not increase the probability or consequences of accidents previously analyzed that affect facility radiation levels or facility radiological effluents. The licensee has analyzed the results of previous Type A tests performed at Zion Nuclear Power Station, Unit 1, and has provided an acceptable basis for concluding that, with the proposed one-time extension of the Type A test interval, the containment leakage rates will still be maintained within

acceptable limits. Accordingly, the Commission has concluded that the one-time extension does not result in a significant increase in the amounts of any effluents that may be released nor does it result in a significant increase in individual or cumulative occupational radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption only involves Type A testing of the containment. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated December 1972, related to the operation of the Zion Nuclear Power Station, Unit 1.

Agencies and Persons Consulted

In accordance with its stated policy, on June 7, 1995, the NRC staff consulted with the Illinois State Official, Mr. Frank Niziolek; Head, Reactor Safety Section, Division of Engineering; Illinois Department of Nuclear Safety; regarding the environmental impact of the proposed action. The State official had no comments.

Finding of no Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment . Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's letter dated May 12, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 26th day of June 1995.

For the Nuclear Regulatory Commission.

Clyde Y. Shiraki,

Senior Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–16110 Filed 6–29–95; 8:45 am]

BILLING CODE 7590–01–M

Governor's Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982 (47 FR 596 and 47 FR 600), the Nuclear Regulatory Commission (NRC) published in the Federal Register, as final, certain amendments to 10 CFR parts 71 and 73 (effective July 6, 1982), which require advance notification to Governors or their designees concerning transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in part 73 is for spent nuclear reactor fuel shipments and the notification for part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR part 73).

The following list updates the names, addresses and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the Federal Register on or about June 30, to reflect any changes in information.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

State and Part 71	Part 73
Alabama: Col. Gene Mitchell, Director Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36102–1511, (334) 242–4378.	Same.
Alaska: Doug Dasher, Alaska Department of Environmental Conservation, Northern Regional Office, 610 University Avenue, Fairbanks, AK 99709–3643, (907) 451–2184.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State and Part 71	Part 73
Arizona: Aubrey V. Godwin, Director, Arizona Radiation Regulatory Agency, 4814 South 40th Street, Phoenix, AZ 85040, (602) 255–4845, 24 hours: (602) 223–2212.	Same.
Arkansas: Greta J. Dicus, Director, Division of Radiation Control and Emergency Management Programs, Arkansas Department of Health, 4815 West Markham Street, Little Rock, AR 72205–3867, (501) 661–2301, 24 hours: (501) 661–2136 or 661–2000.	Same.
California: L. Denno, Chief, Enforcement Services Division, California Highway Patrol, 444 North Third Street, Suite 310, Sacramento, CA 95814, (916) 445–3253.	Same.
Colorado: Captain Allan M. Turner, Hazardous Materials Section, Colorado State Patrol, 700 Kipling Street, Suite 1000, Denver, CO 80215–5865, (303) 239–4546, 24 hours: (303) 239–4501.	Same.
Connecticut: Commissioner Sidney J. Holbrook, Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106–5127, (203) 424–3001, 24 hours: (203) 566–3333.	Same.
Delaware: Karen L. Johnson, Secretary, Department of Public Safety, P.O. Box 818, Dover, DE 19903, (302) 739–4321, 24 hours: (302) 739–5851.	Same.
Florida: Harlan Keaton, Manager, Environmental Radiation Program, Office of Radiation Control, Department of Health and Rehabilitative Services, P.O. Box 680069, Orlando, FL 32868–0069, (407) 297–2095.	Same.
Georgia: Al Hatcher, Director, Transportation Division, Public Service Commission, 1007 Virginia Avenue, Suite 310, Hapeville, GA 30354, (404) 559–6600.	Same.
Hawaii: James K. Ikeda, Acting Deputy Director for Environmental Health, State Department of Health, P.O. Box 3378, Honolulu, HI 96801, (808) 548–4424.	Same.
Idaho: Captain David C. Rich, Department of Law Enforcement, Idaho State Police, 700 South Stratford Drive, P.O. Box 700, Meridian, ID 83680–0700, (208) 884–7206.	Same.
Illinois: Thomas W. Ortciger, Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 785–9868, 24 Hours: (217) 785–9900.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State and Part 71	Part 73
Indiana: Lloyd R. Jennings, Superintendent, Indiana State Police, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, IN 46204, (317) 232–8248.	Same.
Iowa: Ellen M. Gordon, Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, IA 50319–0113, (515) 281–3231.	Same.
Kansas: Frank H. Moussa, M.S.A., Technological Hazards Administrator, Department of the Adjutant General, Division of Emergency Management, 2800 S.W. Topeka Boulevard, Topeka, KS 66611–1287, (913) 274–1409, 24 hours: (913) 296–3176.	Same.
Kentucky: Michael W. Easley, D.D.S., M.P.H., Director, Division of Environmental Health & Community Safety, Department of Health Services, 275 East Main Street, Frankfort, KY 40621, (502) 564–7398.	Same.
Louisiana: Lt. Russell R. Robinson, Louisiana State Police, 7901 Independence Boulevard, P.O. Box 66614 (#21) Baton Rouge, LA 70896, (504) 925–6113.	Same.
Maine: Chief of the State Police, Maine Dept. of Public Safety, 36 Hospital Street, Augusta, ME 04333, (207) 624–7074.	Same.
Maryland: Colonel James E. Harvey, Chief, Maryland State Police, 1201 Reisterstown Road, Pikesville, MD 21208, (410) 653–4218, 24 hours: (410) 653–4200.	Same.
Massachusetts: Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Public Health, State Laboratory Institute, 305 South Street, 7th Floor, Jamaica Plain, MA 02130, (617) 727–6214.	Same.
Michigan: Captain Allen L. Byam, Commanding Officer, Special Operations Division, Michigan Department of State Police, 714 S. Harrison Road, East Lansing, MI 48823, (517) 336–6263, 24 hours: (517) 336–6100.	Same.
Minnesota: John R. Kerr, Assistant Director, Planning Branch, Minnesota Division of Emergency Management, B5–State Capitol, 75 Constitution Avenue, St. Paul, MN 555155, (612) 296–0481, 24 hours: (612) 649–5451.	Same.
Mississippi: James E. Maher, Director, Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39296–4501, (601) 352–9100.	Same.
Missouri: Jerry B. Uhlmann, Director, Emergency Management Agency, 2302 Militia Drive, P.O. Box 116, Jefferson City, MO 65102, (314) 526–9101, 24 hours: (314) 751–2748.	Same.
Montana: Adrian Howe, Chief, Occupational and Radiologic, Health Bureau, Environmental Sciences Div., Dept. of Health and Environmental Sciences, 1400 Broadway, P.O. Box 200901, Helena, MT 59620, (406) 444–3671, 24 hours: (406) 442–7491.	(1)
Nebraska: Colonel Ron Tussing, Superintendent, Nebraska State Patrol, P.O. Box 94907, Lincoln, NE 68509–4907, (402) 479–4931, 24 hours: (402) 471–4545.	Same.
Nevada: Stanley R. Marshall, Supervisor, Radiological Health Section, Bureau of Health Protection Services, Nevada Division of Health, 505 East King Street, Carson City, NV 89710, (702) 687–5394, 24 hours: (702) 687–5300.	Same.
New Hampshire: Richard M. Flynn, Commissioner, New Hampshire Dept. of Safety, James H. Hayes Building, 10 Hazen Drive, Concord, NH 03305, (603) 271–3636 (24 hours).	Same.
New Jersey: Kent Tosch, Manager, Department of Environmental Protection and Energy, Bureau of Nuclear Engineering, CN 415, Trenton, NJ 08625–0415, (609) 987–2031.	Same.
New Mexico: Roland K. Lough, Chief, Emergency Management Bureau, Department of Public Safety, P.O. Box 1628, Santa Fe, NM 87504–1628, (505) 827–9223, 24 hours: (505) 294–7932.	Same.
New York: Anthony J. Germano, Director, State Emergency Management Office, Public Security Building #22, State Campus, Albany, NY 12226–5000, (518) 457–9996.	Same.
North Carolina: First Sergeant T.C. Stroud, Hazardous Materials Coordinator, North Carolina Highway Patrol Headquarters, 512 N. Salisbury St., P.O. Box 27687, Raliegh, NC 27611–7687, (919) 733–5282, After hours: (919) 733–3861.	Same.
North Dakota: Dana K. Mount, Director, Division of Environmental Engineering, North Dakota Department of Health, 1200 Missouri Avenue, Box 5520, Bismarck, ND 58506–5520, (701) 328–5188, After hours: (701) 328–2121.	Same.
Ohio: Maj. Gen. James R. Williams, Chief of Staff, Ohio Emergency Management Agency, 2855 W. Dublin-Granville Road, Columbus, OH 43235–2206, (614) 889–7150.	Same.
Oklahoma: Kenneth Vanhoy, Commissioner of Public Safety, Oklahoma Department of Public Safety, P.O. Box 11415, Oklahoma City, OK 73136–0145, (405) 425–2001, 24 hours: (405) 425–2424.	Same.
Oregon: David Stewart-Smith, Administrator, Facility Regulation Division, Oregon Department of Energy, 625 Marion Street, N.E., Salem, OR 97310, (503) 378–6469.	Same.
Pennsylvania: John Bahnweg, Director of Operations, Pennsylvania Emergency Management Agency, P.O. Box 3321, Harrisburg, PA 17105–3321, (717) 783–8150.	Same.
Rhode Island: William A. Maloney, Associate Administrator, Motor Carriers Section, Division of Public Utilities and Carriers, 100 Orange Street, Providence, RI 02903, (401) 277–3500, ext. 150.	Same.
South Carolina: Virgil R. Autry, Director, Division of Radioactive Waste Management, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 896–4244, Emergency: (803) 253–6488.	Same.
South Dakota: Gary N. Whitney, Division Director, Emergency Management, 500 E. Capitol Avenue, Pierre, SD 57501–5060, (605) 773–3231.	Same.
Tennessee: John White, Assistant Deputy Director, Tennessee Emergency Management Agency, State Emergency Operations Center, 3041 Sidco Drive, Nashville, TN 37204, (615) 741–0001, After hours: (Inside TN) 1–800–262–3300, (Outside TN) 1–800–258–3300.	Same.
Texas: Richard A. Ratliff, Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, TX 78756, (512) 834–6688.	(2)
Utah: William J. Sinclair, Director, Division of Radiation Control, 168 North 1950 west, P.O. Box 144850, Salt Lake City, UT 84114–4850, (801) 536–4250, After hours: (801) 536–4123.	Same.
Vermont: Patrick J. Garahan, Secretary, Vermont Transportation Agency, 133 State Street, Montpelier, VT 05633–5001, (802) 828–2657.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State and Part 71	Part 73
Virginia: L. Ralph Jones, Jr., Director, Technological Hazards Division, Department of Emergency Services, Commonwealth of Virginia, 310 Turner Road, Richmond, VA 23225, (804) 674–2400.	Same.
Washington: Commander Maurice C. King, Washington State Patrol, General Administration Building, P.O. Box 42613, Olympia, WA 98504–2613, (360) 586–2340.	Same.
West Virginia: Colonel Thomas L. Kirk, Superintendent, Division of Public Safety, West Virginia State Police, 725 Jefferson Road, South Charleston, WV 25309, (304) 746–2111.	Same.
Wisconsin: Leroy E. Conner, Jr., Administrator, Wisconsin Division of Emergency Government, P.O. Box 7865, Madison, WI 53707–7865, (608) 242–3232.	Same.
Wyoming: Captain L. S. Gerard, Motor Carrier Officer, Wyoming Highway Patrol, 5300 Bishop Boulevard, P.O. Box 1708, Cheyenne, WY 82003–1708, (307) 777–4317, 24 hours: (307) 777–4323.	Same.
District of Columbia: Norma J. Stewart, Program Manager, Pharmaceutical, Radiological, and Medical Devices Control Division, Department of Consumer and Regulatory Affairs, 614 H Street, NW, Washington, DC 20001, (202) 727–7218, After hours: (202) 727–6161.	Same.
Puerto Rico: Hector Russe Martinez, Chairman, Environmental Quality Board, P.O. Box 11488, San Juan, PR 00910, (809) 767–8056 or (809) 725–5140.	Same.
Guam: Fred M. Castro, Administrator, Environmental Protection Agency, P.O. Box 2999, Agana, Guam 96910, (671) 646–8863/64/65.	Same.
Virgin Islands: Roy L. Schneider, Governor, Governor's Office, 21–22 Kongens Gade, St. Thomas, Virgin Islands 00802, (809) 774–0001.	Same.
American Samoa: Pati Faiai, Government Ecologist, Environmental Protection Agency, Office of the Governor, Pago Pago, American Samoa 96799, (684) 633–2304.	Same.
Commonwealth of the Northern Mariana Islands: Nicolas M. Leon Guerrero, Director, Department of Natural Resources Commonwealth of Northern, Mariana Islands Government, Capitol Hill, Saipan, MP 96950, (670) 322–9830 or (670) 322–9834.	Same.

[1] Jim Greene, Administrator, Disaster and Emergency Services, P.O. Box 4789, Helena, MT 59604 (406) 444–6911

[2] Col. James Wilson, Director, Texas Department of Public Safety, 5805 N. Lamar Blvd., Austin, TX 78752, (512) 465–2000.

Questions regarding this matter should be directed to Spiros Droggitis at (301) 415–2367.

Dated at Rockville, Maryland this 21st day of June 1995.

For the Nuclear Regulatory Commission.

Richard L. Bangart,

Director, Office of State Programs.

[FR Doc. 95–15676 Filed 6–29–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–390 and 50–391]

Tennessee Valley Authority; Availability of Safety Evaluation Report Supplement Related to the Operation of Watts Bar Nuclear Plant, Units 1 and 2

The U.S. Nuclear Regulatory Commission has published the Safety Evaluation Report, Supplement 15 (NUREG–0847, Supp. 15) related to the operation of Watts Bar Nuclear Plant, Units 1 and 2, Docket Nos. 50–390 and 50–391.

Copies of the report have been placed in the NRC's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and in the Local Public Document Room, Chattanooga-Hamilton Library, 1001 Broad Street, Chattanooga, Tennessee 37402, for review by interested persons. Copies of the report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. GPO deposit account holders may charge orders by calling 202–512–2249 or 2171. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Rockville, Maryland this 22nd day of June, 1995.

For The Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Regulatory Commission.

[FR Doc. 95–16111 Filed 6–29–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. CPR–39, and Facility Operating License No. DPR–48 issued to Commonwealth Edison Company (ComEd, the licensee), for operation of the Zion Nuclear Power Station, Unit 1 and Unit 2, respectively, located in Lake County, Illinois.

The proposed amendment would add a provision to the Technical Specifications (TSs) to allow the hot restart sequence loading test of the emergency diesel generators (EDGs) to be performed independent of the 24-hour endurance test. The TSs currently incorporate by referencing Regulatory Guide 1.108, the requirement that the tests be performed in a certain sequence, the 24-hour endurance test first, followed immediately by the hot restart sequence loading test. The proposed change consists of a footnote added to Specification 4.15.1.B.3 which states that the hot restart sequence loading test need not be performed immediately following the 24-hour endurance test, but shall be performed within 5 minutes of shutting down the EDG after it has operated for a minimum of 2 hours between 3600 and 4000 KW. In addition, statements are added to the Bases in Section 4.15 to note this change to the required testing.

10 CFR 50.91(a)(6) specifies that the Commission may, where exigent circumstances exist, allow less than 30 days for public comment. Exigent circumstances have been found to exist for this proposed amendment. The licensee identified the emergency diesel generator testing as an issue of noncompliance with the TSs on June 12, 1995, during a review of another license amendment request. Changes to the EDG test procedure made during preparations for the dual unit outage (DUO) of fall 1993 allowed the hot restart sequence loading test to be performed independently of the 24-hour endurance run. These tests were

performed on all 5 EDGs during the DUO and repeated for the 2A and 2B EDGs during the Unit 2 refueling outage (RFO) in 1995. When this noncompliance was identified, both units were at 100% power. The licensee requested and was granted a Notice of Enforcement Discretion (NOED) verbally on June 13, 1995. The written request for the NOED and a request for a license amendment were submitted on June 14, 1995. To restore compliance with the TSs as quickly as possible and maintain public participation in the license amendment process as much as practical, the staff is exercising the exigent provisions of 10 CFR 50.91(a)(6).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of occurrence of any accident previously evaluated.

The proposed changes to the Technical Specifications will change the sequence of testing of EDGs that is performed on a refueling cycle basis. The proposed changes will decouple the hot restart test from the 24 hour EDG test. The proposed testing requirements satisfy the underlying purpose of the EDG hot restart test, in that the testing as proposed will verify the ability of the EDG to complete the start up sequence from an equilibrium temperature immediately following operation at full load (continuous rating) for a period of time long enough to stabilize operating temperature. Since the proposed changes impact only surveillance requirements used to periodically verify the operability of a required safety system, and since the proposed changes provide an equivalent level of testing and eliminate redundant testing, the proposed changes will not impact the operability or availability of a required system.

Operation in accordance with the revised requirements will not increase the likelihood that a transient initiating event will occur since transients are initiated by equipment malfunction and/or catastrophic system failure. The revised requirements affect testing that is performed during refueling. Testing in accordance with the proposed requirements will not increase the probability of failure of the EDGs since the testing will provide an equivalent level of testing to verify the operability of the EDGs. In addition, failure of an EDG to start or failure of an EDG while operating is not assumed to be an initiating event of an accident considered in the Updated Final Safety Analysis Report (UFSAR).

Based on the above, operation in accordance with the proposed requirements will not significantly increase the probability of occurrence of any accident previously evaluated.

The proposed requirements will meet the underlying purpose of the existing testing requirements. The proposed testing will ensure the ability of the EDG to start from a hot condition in the unlikely event of an accident. The proposed testing requirements will only decouple the hot restart test of the EDG from the 24 hour test of the EDG that is performed during each refueling outage. Since the proposed changes will not adversely affect the operability or availability of the EDGs, the ability of the EDGs to operate and power equipment important to safety will not be impacted and the ability to mitigate the consequences of accidents previously evaluated will not be affected. Based on the preceding discussion, the consequences of accidents previously evaluated will not significantly increase.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications do not involve the addition of any new of [or] different types of safety related equipment, nor do they involve the operation of equipment required for safe operation of the facility in a manner different from those addressed in the UFSAR. No safety related equipment or function will be altered as a result of the proposed changes. Also, the procedures that govern normal operation and recovery from an accident are not affected by the proposed changes. The proposed changes only decouple the hot restart test of the EDG from the 24 hour test of the EDG that is performed each refueling outage. Testing in accordance with the revised requirements will provide an equivalent level of confidence in the reliability of the EDG systems to complete the start up sequence from a hot condition. The proposed testing requirements satisfy the intent of Regulatory Guide 1.108 in that the testing requirements will ensure EDG operability and reliability. In addition, the proposed changes are consistent with the intent of the changes recommended by the NRC in Generic Letter 93–05 and are consistent with the requirements of NUREG–1431. Since no new failure modes or mechanisms are introduced by the proposed changes, the possibility of a new or different kind of accident is not created.

3. The proposed changes do not involve a significant reduction in a margin of safety.

Plant safety margins are established through LCOs (Limiting Condition for Operation), limiting safety system settings, and safety limits specified in the Technical Specifications.

There will be no changes to either the physical design of the plant or to any of these settings or limits as a result of the proposed changes. The proposed testing requirements will only decouple the hot restart test of the EDG from the 24 hour test of the EDG that is performed during each refueling outage. Testing in accordance with the proposed requirements will verify the ability of the EDGs to complete the start up sequence from a hot condition as is intended by the recommended testing in Regulatory Guide 1.108. In addition, the proposed changes are consistent with the intent of the changes recommended by the NRC in Generic Letter 93–05. Since the proposed changes will not impact the availability or operability of the EDGs to perform their intended function and since no LCOs, safety limits, or safety system settings are affected by the proposed changes, there is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 31, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Comment Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Waukegan Public Library, 128 North County Street, Waukegan, Illinois 60085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra, Director, Project Directorate III–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 14, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Waukegan Public Library, 128 North County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 23rd day of June 1995.

For The Nuclear Regulatory Commission.

Clyde Y. Shiraki,

Project Manager, Project Directorate III–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–16109 Filed 6–29–95; 8:45 am]

BILLING CODE 7590–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2782]

Illinois; Declaration of Disaster Loan Area (Amendment #1)

The above-numbered Declaration is hereby amended, effective June 16, 1995, to include the following counties in the State of Illinois as a disaster area due to damages caused by severe storms and flooding: Alexander, Brown, Calhoun, Cass, Greene, Jackson, Jersey, Mason, Monroe, Morgan, Pike, Pulaski, Randolph, Schuyler, Scott, and Union. This Declaration is further amended, effective June 15, 1995, to establish the incident period for this disaster as beginning on May 15, 1995 and continuing through June 15, 1995.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Adams, Franklin, Fulton, Hancock, Johnson, Logan, Massac, McDonough, Menard, Perry, Sangamon, Tazewell, and Williamson Counties in Illinois; McCracken County in Kentucky; and Marion and Ralls Counties in Missouri.

Any counties contiguous to the above-named primary counties and not listed here have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 29, 1995, and for loans for economic injury the deadline is March 1, 1996. The economic injury numbers are 853300 for Illinois, 853400 for Missouri, and 854000 for Kentucky.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: June 23, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–1655 Filed 6–29–95; 8:45 am]

BILLING CODE 8025–01–M

Hartford District Advisory Council Meeting

The U.S. Small Business Administration Hartford District Advisory Council will hold a public meeting on Monday, July 17, 1995 at 8:30 a.m. at 2 Science Park, New Haven, Connecticut 06511, to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ms. Jo-Ann Van Vechten, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut, (203) 240–4670.

Dated: June 26, 1995.

Dorothy A. Overal,

Director, Office of Advisory Council.

[FR Doc. 95–16156 Filed 6–29–95; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, As Amended; Computer Matching Program (SSA/Department of Labor (DOL))

AGENCY: Social Security Administration.

ACTION: Notice of Computer Matching Program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–5138 or writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program and Integrity Reviews as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal Government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State or local government records.

Among other things, it requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: June 19, 1995.

Shirley S. Chater,

Commissioner of Social Security.

Notice of Computer Matching Program, Social Security Administration (SSA) with the Department of Labor (DOL)

A. Participating Agencies

SSA and DOL.

B. Purpose of the Matching Program

The purpose of this matching program is to establish the conditions under which DOL agrees to the disclosure of Part C Black Lung benefit data to SSA. SSA will use the match results to determine certain Social Security entitlements and benefit reductions required by the Social Security Act (the Act).

C. Authority for Conducting the Matching Program

Section 224(h)(1) of the Act.

D. Categories of Records and Individuals Covered by the Match

DOL will provide SSA with a magnetic tape file extracted from the Office of Workers' Compensation Programs Black Lung Benefits Payments File. The extracted file will contain information about all live miners, under

age 65, entitled to Part C Black Lung benefits. Each record on the DOL file will be matched to SSA's Master Beneficiary Record to identify individuals potentially subject to benefit reductions under the statutory provisions listed above.

E. Inclusive Dates of the Match

The matching program shall become effective no sooner than 40 days after a copy of the agreement, as approved by the Data Integrity Boards of both agencies, is sent to Congress and the Office of Management and Budget (OMB) (or later if OMB objects to some or all of the agreement) or 30 days after publication of this notice in the **Federal Register**, (August 29, 1995), whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 95–16194 Filed 6–29–95; 8:45 am]

BILLING CODE 4190–29–P

Privacy Act of 1974; Computer Matching Programs (SSA/Participating States Match of Confined Juvenile Data, Match #1063)

AGENCY: Social Security Administration.

ACTION: Notice of Computer Matching Programs.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces computer matching programs that SSA plans to conduct.

DATES: SSA will file a report of the subject matching programs with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget. The matching programs will be effective as indicated below:

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–5138 or writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program and Integrity Reviews at the above address.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching Federal agencies when records in a system of records are matched with other Federal, State or local Government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching program(s);

(2) Obtain the Data Integrity Boards' approval of the match agreement(s);

(3) Furnish detailed reports about matching programs to Congress and the Office of Management and Budget;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: June 22, 1995.

Shirley S. Chater,

Commissioner of Social Security.

Notice of Computer Matching Programs, State Files of Confined Juveniles with the Social Security Administration (SSA), Supplemental Security Record (SSR).

A. Participating Agencies

SSA and Participating States.

B. Purpose of the Matching Program

To set forth the terms under which a participating State agrees to furnish confined juvenile population information to SSA, pursuant to section 1631(e)(1)(B) of the Social Security Act (the Act). This section requires SSA to verify eligibility under title XVI of the Act with independent or collateral sources. Section 1611(e)(1)(A) of the Act generally requires SSA to suspend title XVI payments to an individual for any month during which the individual is an inmate of a public institution.

C. Authority for Conducting the Matching Program

Sections 1611(e)(1)(A) and 1631(e)(1)(B) of the Act (42 U.S.C. 1382(e)(1)(A) and 1383(e)(1)(B)).

D. Categories of Records and Individuals Covered by the Match

Participating States will submit names and other identifying information of confined juveniles from State files. The incoming confined juvenile records will be matched with data from the SSR, HHS/SSA/OSR 09–60–0103 (60 FR 2144, January 6, 1995) and Master Files of Social Security Number (SSN) Holders and SSN Applications (Numident, Alphident) HHS/SSA/OSR 09–60–0058 (60 FR 2144, January 6, 1995).

E. Inclusive Dates of the Match

An individual agreement under this matching program shall become effective 40 days after a copy of the model agreement, as approved by the Data Integrity Board, is sent to Congress and the Office of Management and Budget (OMB) (or later if OMB objects to some or all of this agreement), or 30 days after publication of this notice in the **Federal Register**, (August 29, 1995), or after all parties to any individual agreement under this matching program have signed the agreement, whichever date is latest. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 95–16195 Filed 6–29–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–048]

Annual Certification of Cook Inlet Regional Citizens' Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990, the Coast Guard may certify, on an annual basis, a voluntary advisory group in lieu of a Regional Citizens' Advisory Council for Cook Inlet, Alaska. This certification allows the advisory group to monitor the activities of oil tankers and facilities under the Cook Inlet Program established by the Act. The purpose of this notice is to inform the public that the Coast Guard has recertified the

alternative voluntary advisory group for Cook Inlet, Alaska.

DATES: June 1, 1995, through May 31, 1996.

EFFECTIVE DATE: Mrs. Janice Jackson, Project Manager, Marine Environmental Protection Division, (G–MEP–3), (202) 267–0500, U.S. Coast Guard Headquarters, 2100 Second Street S.W., Washington, DC, 20593–0001.

SUPPLEMENTARY INFORMATION: As part of the Oil Pollution Act of 1990, Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990, (the Act), 33 U.S.C. 2732, to foster the long-term partnership among industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals and oil tankers.

Section 2732(o) permits an alternative voluntary advisory group to represent the communities and interests in the vicinity of the oil terminal facilities in Cook Inlet, in lieu of a council of the type specified in 33 U.S.C. 2732(d), if certain conditions are met. The Act requires that the group enter into a contract to ensure annual funding and receive annual certification by the President that it fosters the general goals and purposes of the Act and is broadly representative of the community and interests in the vicinity of the terminal facilities. Accordingly, in 1991, the President granted certification to the Cook Inlet Regional Citizens' Advisory Council (CIRCAC). The authority to certify alternative advisory groups was subsequently delegated to the Commandant of the Coast Guard, and redelegated to the Chief, Office of Marine Safety, Security and Environmental Protection.

On April 20, 1995, the Coast Guard announced in the **Federal Register,** the availability of the application for recertification that it received from the CIRCAC, and requested comments (60 FR 19803). Six comments were received.

Discussion of Comments

The Coast Guard received six comments in response to the recertification application of the CIRCAC. Five of these supported recertification of CIRCAC without reservation. However, a comment received from a member of the CIRCAC Monitoring Committee, while supporting recertification, offered constructive criticism in several areas.

The comment raised several important issues and possible methods of addressing what the commenter perceives as shortcomings in the current operation of CIRCAC. Specifically, the comment suggested limiting the terms of office for CIRCAC members and committee leaders. This, according to the comment, would help to increase local participation through the years by involving greater numbers of individuals from the community. The comment suggests that unless greater numbers of local citizens are involved, CIRCAC may become too removed from the regional community. The comment also suggests a close review of the focus of CIRCAC's activities. The comment suggest that too much emphasis, and funds, may be placed on travel outside the region, rather than activities sponsored within the community. The Coast Guard has forwarded the comment to CIRCAC and asked the members to review the issues raised, consider the suggestions put forth, and provide a response to the Coast Guard.

In a related issue, the Coast Guard has noted through the year in its own review of CIRCAC, that the open budget process needed improvement to assure that it is maintained in a manner which will ensure that all members are aware of the projects being undertaken and the funds being expended by CIRCAC and its subcommittees. The Coast Guard notes that significant progress has been made to rectify this problem. The Coast Guard will continue to stress the need for an open budget process and consider CIRCAC's progress in this area when reviewing future applications for recertification.

It is the Coast Guards's position that the issues raised by the CIRCAC Monitoring Committee member and the Coast Guard can be addressed successfully by CIRCAC and, in fact, progress has been made in these areas in recent months. In light of this, and the many positive comments received regarding CIRCAC's performance throughout the year, the Coast Guard has determined that recertification of CIRCAC in accordance with the Act is appropriate. The Coast Guard has informed CIRCAC that documentation should be included in CIRCAC's recertification application next year indicating how each of the issues raised by the Monitoring Committee Member and the Coast Guard have been addressed.

Recertification

By letter dated May 30, 1995, the Chief, Office of Marine Safety, Security and Environmental Protection certified that the Cook Inlet Regional Citizens' Advisory Council qualifies as an alternative voluntary advisory group under the provisions of 33 U.S.C. 2732(o). This recertification terminates on May 31, 1996. The Cook Inlet Regional Citizens' Advisory Council was advised to review and address the issues raised during this recertification period in order to strengthen the organization and foster the goals and purposes of the Act. These efforts will be examined with future recertification requests of the CIRCAC.

Dated: June 23, 1995.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–16141 Filed 6–29–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD 95–058]

National Boating Safety Advisory Council; Application for Appointment

AGENCY: Coast Guard, DOT.

ACTION: Request for applicants.

SUMMARY: The U.S. Coast Guard is seeking additional applicants for appointment to membership on the National Boating Safety Advisory Council (NBSAC). The Council is a 21 member Federal advisory committee that advises the Coast Guard on matters related to recreational boating safety.

DATES: Completed application forms must be received by August 29, 1995.

ADDRESSES: Requests for application forms, as well as the completed application forms, should be sent to Commandant (G–NAB), U.S. Coast Guard Headquarters, Washington, DC 20593–0001; telephone: (202) 267–1077.

FOR FURTHER INFORMATION CONTACT: Mr. A. J. Marmo, Executive Director, National Boating Safety Advisory Council (G–NAB), Room 1202, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001; (202) 267–1077.

SUPPLEMENTARY INFORMATION: The NBSAC was formed by the Federal Boat Safety Act of 1971. Members for the Council are drawn equally from the following sectors of the boating community: State officials responsible for State boating safety programs; recreational boat and associated equipment manufacturers; and national recreational boating organizations and the general public. Members are appointed by the Secretary of Transportation. Applicants are considered for membership on the basis of their expertise, knowledge, and experience in recreational boating safety. The terms of appointment are staggered so that seven vacancies occur each year.

Applications are being sought for membership vacancies that will occur as

follows: Two (2) representatives of State officials responsible for State boating safety programs; three (3) representatives of recreational boat and associated equipment manufacturers; and two (2) representatives of national recreational boating organizations and from the general public. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

The Council normally meets twice each year at a location selected by the Coast Guard. When attending meetings of the Council, members are provided travel expenses and per diem.

Dated: June 26, 1995.

J.A. Greech,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–16140 Filed 6–29–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Southwest Florida International Airport, Ft. Myers, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the revised future noise exposure map submitted by the Lee County Port Authority, Ft. Myers, Florida for The Southwest Florida International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for The Southwest Florida International Airport under Part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before November 13, 1995. This program was submitted subsequent to a determination by FAA that the associated existing noise exposure map submitted under 14 CFR part 150 for The Southwest Florida International Airport was in compliance with applicable requirements effective November 21, 1994.

EFFECTIVE DATE: The effective date of the FAA's determination on the revised future noise exposure map and of the start of its review of the associated noise compatibility program is May 17, 1995. The public comment period ends July 16, 1995.

EFFECTIVE DATES: The effective date of the FAA's determination on the revised future noise exposure map and of the start of its review of the associated noise compatibility program is May 17, 1995. The public comment period ends July 16, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397, (407) 648–6583. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the revised future noise exposure map submitted for The Southwest Florida International Airport is in compliance with applicable requirements of part 150, effective May 17, 1995. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before November 13, 1995. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of project aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties to the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Lee County Port Authority, Ft. Myers, Florida, submitted to the FAA on April 27, 1995, a revised future noise exposure map, descriptions and other documentation which were produced during the Southwest Florida International Airport FAR part 150 Study conducted between January, 1994 and April, 1995. It was requested that the FAA review this material as the future noise exposure map, as described in Section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act.

The FAA has completed its review of the revised future noise exposure map and related descriptions submitted by the Lee County Port Authority, Ft. Myers, Florida. The specific map under consideration is ''RECOMMENDED FUTURE (1999) NOISE CONTOURS WITH RUNWAY EXTENSIONS AND PARALLEL RUNWAY MAP B'' in the submission. The FAA has determined that this map for the Southwest Florida International Airport is in compliance with applicable requirements. This determination is effective on May 17, 1995. FAA's determination on an airport operator's noise exposure maps is limited to a funding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the

statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for The Southwest Florida International Airport, also effective on May 17, 1995. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before November 13, 1995.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397

Lee County Port Authority, 16000 Chamberlin Parkway, Suite 8671, Ft. Myers, FL 33913–8899

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, May 17, 1995.

Charles E. Blair, Manager,

Orlando Airports District Office.

[FR Doc. 95–16164 Filed 6–29–95; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 185; Aeronautical Spectrum Planning Issues

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 185 meeting to be held August 1–3, 1995, starting at 9:00 a.m. The meeting will be held at the RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, D.C., 20036.

The agenda will be as follows:

(1) Welcome and Administrative Remarks;

(2) Introductions;

(3) Review and Approval of the Agenda;

(4) Review and Approval of the Summary of the Previous Meeting;

(5) Review of Results of Working Group 1 Editorial Group Meeting;

(6) Presentations;

(7) Assignment of Tasks;

(8) Other Business;

(9) Date and Place of Next Meeting.

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, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the pubic may present a written statement to the committee at any time.

Issued in Washington, D.C., on June 26, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–16165 Filed 6–29–95; 8:45 am]

BILLING CODE 4810–13–M

Flight Service Station at Butte, MT; Notice of Closing

Notice is hereby given that on or about July 26, 1995, the flight service station at Butte, Montana, will be closed. Services to the aviation public formerly provided by this facility will be provided by the automated flight service station in Great Falls, Montana. This information will be reflected in the FAA Organization Statement the next time it is issued. Sec. 313(a) of Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Seattle, Washington, on June 20, 1995.

Frederick M. Isaac,

Regional Administrator, Northwest Mountain Region.

[FR Doc. 95–16166 Filed 6–29–95; 8:45 am]

BILLING CODE 4810–13–M

Federal Highway Administration

[FHWA Docket No. 94–29]

Exemption Criteria for Highway Sanctions

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed policy statement; request for comments.

SUMMARY: The purpose of this document is to propose a policy which would: govern the exemption criteria that would be used to determine which projects could advance if the Environmental Protection Agency (EPA) imposes highway sanctions in accordance with section 179(a) or section 110(m) of the CAA, in conjunction with EPA regulations published in the **Federal Register** on January 11, 1994, and August 4, 1994; define the requirements which establish the basis for project exemptions; and describe and clarify the types of projects and programs which are exempt. The FHWA requests comments on the proposed policy.

DATES: Comments should be received by August 29, 1995.

ADDRESSES: Submit written, signed comments to FHWA Docket 94–29, Federal Highway Administration, Room 4232, HCC–10, Office of Chief Counsel, 400 Seventh Street, SW., Washington DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 4:15 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Lucy Garliauskas, Office of Environment and Planning, (202) 366–2068, or Mr. Reid Alsop, Office of Chief Counsel, (202) 366–1372, FHWA. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: This policy statement proposes criteria and offers clarification on the types of projects (''exempt projects'') listed in section 179(b)(1) of the Clean Air Act (CAA) as amended in 1990 (42 U.S.C. 7509(b)(1)), that may continue to advance while an area is subject to highway funding sanctions. Under section 179(b) and section 110(m) of the CAA, the EPA Administrator may impose a prohibition on project approvals and grants made under title 23, United States Code, by the Secretary of Transportation (''highway sanctions''). The descriptions of exempt projects contained within this document would apply equally to sanctions applied under section 179(a) (''mandatory sanctions'') or section 110(m) (''discretionary sanctions''). Section 110(m) contemplates circumstances under which EPA may extend highway sanctions to areas not designated as ''nonattainment''. Hence,

the information contained in this notice applies to attainment, nonattainment, and unclassifiable areas.

As of this date EPA has published two final rules related to sanctions. A final rule was published in the **Federal Register** on January 11, 1994, entitled, ''Criteria for Exercising Discretionary Sanctions under Title I of the Clean Air Act'' (59 FR 1476). It establishes criteria to guide EPA's decision on whether, in a specific circumstance, to impose discretionary sanctions on a statewide basis under section 110(m).

A second regulation, ''Selection of Sequence of Mandatory Sanctions for Findings Made Pursuant to Section 179 of the Clean Air Act,'' was published on August 4, 1994 (59 FR 39832). This regulation establishes that, following section 179(a) findings, the 2-to-1 offset sanction on new or modified major stationary sources applies first, 18 months after the finding (except where EPA reverses the order through a separate rulemaking), unless EPA has determined that the State corrected the deficiency that prompted the finding. Highway sanctions apply second, six months after application of the offset sanction, unless EPA has determined that the State corrected the deficiency that prompted the finding.

Those two final rules (and this proposed policy statement, if made final) effectively supersede the joint DOT/EPA **Federal Register** notice of April 10, 1980 (45 FR 24692), ''Federal Assistance Limitation Required by section 176(a) of the Clean Air Act.'' The EPA also expects to publish another regulation that would establish the sequence of sanctions applied under section 502(d)(2)(B) of the Clean Air Act relating to the EPA's permit program.

The proposed policy seeks to clarify the types of projects which are exempt from sanctions and to establish criteria that are uniformly applied when determining which programs and projects are exempt from highway sanctions. The proposed policy gives recognition to the respective roles and responsibilities of the FHWA and the EPA in applying funding and program/project approval limitations under section 179(b)(1), when the highway sanction is imposed under section 179(a) or section 110(m) of the CAA of 1990.

The policy would be nationally applicable. Although FHWA would consult with EPA to determine whether projects meet the exemption criteria set forth in this proposed policy, the final authority to determine whether a project is exempt from highway sanctions under the safety exemption criteria and seven congressionally authorized activities is the responsibility of the Secretary of Transportation, as delegated to the FHWA. Other transportation related projects, not covered under the aforementioned exemptions, are not exempt unless the EPA Administrator, in consultation with the Secretary of Transportation, finds that they will improve air quality and not contribute to increased single occupancy vehicle (SOV) capacity.

A number of stand-alone projects which do not affect air quality but have other environmentally beneficial impacts are not specifically exempt from sanctions by the CAA. These projects may improve water quality, mitigate wetland impacts, provide landscaping, preserve historic structures, reduce noise, and have other aesthetic benefits. While the proposed policy statement would not exempt these projects, FHWA requests comments as to whether the following types of projects should be exempt from highway sanctions because of their de minimis impact on air quality. These activities are generally exempted from the CAA transportation conformity requirements (see 40 CFR §§ 51.460 and 93.134). Comments should include a discussion of the basis for the commentor's position in favor of, or against, such an exemption. FHWA would consult further with EPA before granting such an exemption.

The projects for which exemption status is being considered include:

1. Wetland mitigation;
2. Planting trees, shrubs, wildflowers;
3. Landscaping;
4. Purchase of scenic easements;
5. Billboard and other sign removal;
6. Historic preservation;
7. Transportation enhancements; and
8. Noise abatement.

Requirements which Establish the Basis for Highway Sanctions Exemptions

The Secretary of Transportation may make certain project approvals and award grants, even while the nonattainment area or State is under highway sanctions. As stated in section 179(b)(1) of the CAA, safety projects could go forward provided the Secretary of Transportation determines that, based on accident or other data, the principal purpose of the project is an improvement in safety to resolve a demonstrated safety problem and will likely result in a significant reduction in or avoidance of accidents.

In addition to safety projects, section 179(b)(1) specifically exempted seven activities from highway sanctions. Projects that the EPA Administrator, in consultation with the Secretary of Transportation, determines would contribute to air quality improvement and would not encourage SOV capacity are also exempted. Programs and projects which are allowed to go forward under section 179(b)(1) should strive to avoid increasing or relocating emissions and congestion rather than simply reducing them.

Safety Program/Project Requirements Under 23 U.S.C.

Several programs have been established under title 23, U.S.C., expressly for the purpose of addressing safety objectives, either through programs targeted at driver behavior or safety projects intended to remediate structures, facilities, or prevent loss of human life. These programs include the:

(1) Highway Safety Improvement Program as defined under 23 CFR Part 924;

(2) the Highway Bridge Replacement and Rehabilitation Program as defined under 23 CFR Part 650, Subpart D; and

(3) grant programs whose principal purpose is to improve safety and which do not include any capital improvements, including all programs established in Chapter I or IV or 23 U.S.C. that are administered by the National Highway Traffic Safety Administration (NHTSA).

Additionally, the Transportation Management and Monitoring Systems defined under 23 CFR Part 500 (58 FR 63475, December 1, 1993), defined data requirements for six management systems and the Traffic Monitoring System. The requirements set forth in the management systems are being phased in and, with the exception of the pavement and bridge management systems, will be fully operational by October 1, 1996. The pavement and bridge management systems are required to be fully operational by October 1, 1997, and October 1, 1998, respectively. These requirements, as applied to the safety and bridge management systems, will yield additional information and data needed to support highway sanction exemptions as specified in section 179(b)(1) of the CAA. This information may be used to supplement existing data or, as it is developed, may improve existing data or information currently available.

Programs or projects stemming from the following provisions could be exempt on the basis of an established safety-related project need meeting section 179(b) requirements. Title 23 of the Code of Federal Regulations (April 1, 1994) sets forth the requirements for eligibility for Federal funding for projects under the Highway Safety Improvement Program (23 CFR Part 924) and the Highway Bridge Replacement and Rehabilitation Program (23 CFR Part

650, Subpart D) and programs administered by NHTSA (Chapters II and III of 23 CFR). These programs have been established with the purpose of addressing safety objectives and may be used to establish justification for the safety exemptions under the CAA if the section 179(b) requirements and those of this policy are fully met.

1. Highway Safety Improvement Program (23 CFR Part 924).

The Highway Safety Improvement Program requires each State to develop and implement a program which has as its goal reducing the number and severity of accidents and decreasing the potential for accidents on all highways. The program is to be continuous and its components consist of planning, implementation, and evaluation of safety programs and projects.

The implementation of the highway safety improvement program is subject to procedures set forth in 23 CFR Part 630, Subpart A, Federal-aid Programs Approval and Project Authorization, and the priorities developed in conjunction with 23 CFR Part 924, section 924.9–Planning.

The planning components of the program shall incorporate a process for collecting and maintaining a record of accident data; a process for analyzing available data to identify hazardous locations on the basis of accident experience or accident potential; a process for conducting engineering studies to develop highway safety improvements; and projects considering the potential reduction in the number and severity of accidents.

2. The Highway Bridge Replacement and Rehabilitation Program.

This program is administered in accordance with 23 U.S.C. 144. Eligible work under this program includes the total replacement of a structurally deficient or functionally obsolete bridge, a nominal amount of approach work sufficient to connect the bridge to the roadway or major work required to restore the structural integrity of a bridge as well as work necessary to correct major safety defects. Bridge projects eligible for funding under the bridge replacement and rehabilitation program must be supported by bridge inventory data and evaluation of the bridge inventory.

Projects are submitted by the State to the FHWA in accordance with 23 CFR part 630, Subpart A, Federal-aid Programs Approval and Authorization. Priority considerations will be given to those projects which will remove from service those highway bridges most in danger of failure.

3. Highway Safety Programs Administered by NHSTA.

The National Highway Traffic Safety Administration (NHTSA) administers (independently, jointly, or cooperatively with other Federal agencies) programs whose principal purpose is to improve highway safety and which do not include any capital improvements. Under these programs, the agency awards either grants, contracts, or cooperative agreements. These programs include, but are not limited to, programs authorized under chapter IV of title 23, U.S.C., such as:

Section 402, Highway Safety Programs, under which the agency promulgates guidelines and awards grants to States having approved highway safety programs designed to reduce traffic accidents and deaths, injuries and property damage;

Section 403, Highway Safety Research and Development, under which the agency engages in research on all phases of highway safety and traffic conditions and other related research and development activities which will promote highway safety;

Section 408, Alcohol Traffic Safety Programs, and section 410, Alcohol Impaired Driving Countermeasures, under which the agency makes grants to States which adopt and implement effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol or a controlled substance.

NHTSA programs also include, but are not limited to, programs authorized under Chapter I of title 23, U.S.C., such as:

Section 153, Use of Safety Belts and Motorcycle Helmets, under which the agency has made grants to States with effective safety belt and motorcycle helmet use laws and under which States are subject to the transfer of certain highway construction funds to section 402 programs for not having such laws in effect;

Section 154, National Maximum Speed Limit, under which States are subject to the transfer of certain highway construction funds to section 402 programs for noncompliance with the National Maximum Speed Limit requirements.

4. ISTEA Management Systems

Section 1034 of the ISTEA amended title 23, United States Code, by adding section 303, Management Systems. Section 303 requires State development, establishment, and implementation of a system for managing each of the following: highway pavement of Federal-aid highways (PMS); bridges on and off Federal-aid highways (BMS); highway safety (SMS); traffic congestion (CMS); public transportation facilities and equipment (PTMS); and intermodal transportation facilities and systems (IMS). An interim final rule (IFR) for these systems was published on December 1, 1993, as 23 CFR part 500. The IFR allows for a phase-in of the management systems ranging over the next several years.

While each of the systems may result in the identification of strategies that benefit attainment of the NAAQS, the data available from the BMS and SMS would significantly contribute to the justification for project exemption for bridge and safety strategies identified by these systems.

The BMS (23 CFR part 500, subpart C), which must be fully operational by October 1, 1998, must include a bridge inventory database, a procedure for predicting the deterioration of bridge elements with or without intervening action, and identification of feasible actions to improve bridge condition, safety, and serviceability.

The SMS (23 CFR part 500, subpart D), which must be fully operational by October 1, 1996, is to provide information for selecting and implementing effective highway safety strategies and projects and must include identification of highway safety strategies, actions, projects or programs for consideration in development of highway safety plans, State enforcement plans, and metropolitan and statewide transportation plans and improvement programs.

The proposed policy for exemption criteria for highway sanctions follows:

HIGHWAY SANCTION EXEMPTION CRITERIA POLICY

SUBJECT: Policy for Exemption Criteria to be Used to Determine Which Projects Can Advance if the Environmental Protection Agency Imposes the Highway Funding Sanction Under section 179(a) or 110(m) of the CAA, as Amended in 1990.

FROM: Rodney E. Slater, Federal Highway Administrator U. S. Department of Transportation.

MEMO TO: Regional Administrators, Federal Lands Highway Program Administrator

The purpose of this memorandum is to define the exemption criteria that will be used to determine which projects can go forward and which grants can be awarded in the event the Environmental Protection (EPA) Agency imposes highway sanctions under section 179(a) or section 110(m) of the Clean Air Act (CAA) of 1990. This policy contains a

description of the criteria for exemptions and clarification of the types of projects and programs that are exempt. Projects for which exemptions can not be granted are also included in this policy memorandum.

A. General Description

Highway sanctions, when applied, halt the approval of projects and the award of any grants funded under title 23, United States Code (Title 23), except as defined in section 179(b) and this policy. This applies to the following major funding programs:

1. Surface Transportation Program (STP);
2. National Highway System;
3. Interstate Maintenance;
4. Bridges;
5. Interstate Construction;
6. Interstate Substitution; and
7. Congestion Mitigation and Air Quality Improvement Program (CMAQ).

Projects funded under all other Title 23 programs and other authorizations are also subject to sanctions, including demonstration projects identified by the Congress and specified in the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 under sections 1103–1108 or in other laws, unless they meet the criteria set forth in this policy memorandum. Additionally, projects to be funded under previously authorized programs, such as Federal-aid Urban, etc., are also subject to sanction.

Projects funded under title 49, U.S.C., chapter 53, the Federal Transit Laws, as amended, are categorically exempt from sanctions by law as are other transportation programs authorized by statutes other than Title 23.

B. Typical Nonexempt Projects

The following types of projects generally do not meet the exemption criteria in section 179(b)(1) and would not be allowed to proceed if funded or approved under Title 23 unless it is demonstrated that they meet one or more of the exemption criteria. These include projects that expand highway or road capacity, nonexempt project development activities and any other project that does not explicitly meet the criteria in this notice. These may include activities for:

1. The addition of general purpose through lanes to existing roads;
2. New highway facilities on new locations;
3. New interchanges on existing highways;
4. Improvements to, or reconfiguration of, existing interchanges;
5. Additions of new access points to the existing road network;
6. Increasing functional capacity of the facility;
7. Relocating existing highway facilities;
8. Repaving or resurfacing except for safety purposes, as defined by section 179(b);
9. Nonexempt projects, project development, including NEPA documentation and preliminary engineering, right-of-way purchase, equipment purchase, and construction;
10. Stand-alone projects that do not affect air quality but have other environmentally beneficial impacts such as wetland mitigation, planting and landscaping, purchase of scenic easements, billboard

and other sign removal, historic preservation, transportation enhancements, and noise abatement.

C. Project Exemptions

Under section 179(b)(1) of the CAA, once the EPA imposes highway sanctions, the FHWA may not approve or award any grants in the sanctioned area except those which fall under three categories: (1) safety programs and projects; (2) congressionally-authorized activities under section 179(b)(1)(B); and (3) air quality improvement projects that do not encourage single occupancy vehicle capacity.

1. Safety Programs and Projects

Safety projects are those for which the principal purpose is an improvement in safety but the projects may also have other important benefits. These projects must resolve a demonstrated safety problem with the likely result being a significant reduction in or avoidance of accidents as determined by the FHWA. Such demonstration must be supported by accident or other data submitted by the State or appropriate local government.

Three types of categories of safety-based programs and projects could potentially meet the exemption criteria: grant programs and related activities; statewide safety improvement programs; and specific projects outside of a statewide safety program. Each category calls for a different level of justification specific to a particular category.

a. Programs administered by the National Highway Traffic Safety Administration qualify for blanket exemptions, on the basis that their principal purpose is to improve safety and do not include any capital improvements. Programs that fall within this category include but are not limited to: Use of Safety Belts and Motorcycle Helmets (23 U.S.C. 153); National Maximum Speed Limit (23 U.S.C. 154); Highway Safety Programs (23 U.S.C. 402); Highway Safety Research and Development (23 U.S.C. 403); Alcohol Traffic Safety Programs (23 U.S.C. 408); and Alcohol-Impaired Driving Countermeasures (23 U.S.C. 401).

b. Statewide safety improvement programs include specific safety projects that can be justified on the basis of State or national level data, which will be additionally supported by data and analysis stemming from the management system requirements once the systems are fully operational. Projects meeting this exemption category would come out of the Highway Safety Improvement Program (23 CFR part 924) and the Highway Bridge Replacement and Rehabilitation Program (23 CFR part 650, subpart D). The Highway Safety Improvement Program also includes the Hazard Elimination Program (23 U.S.C. 152).

c. Specific projects for which justification is needed to show that the project is related to safety, unless the project is drawn out of a statewide safety program and would be likely to reduce accidents, would include capital projects such as:

1. Elimination of, and safety features for, railroad-highway grade crossings;
2. Repair of damage caused by natural disasters, civil unrest, or terrorist acts;
3. Changes in vertical or horizontal alignment;
4. Increasing sight distance;
5. Elimination of high hazard locations or roadside obstacles;
6. Shoulder improvements, widening narrow pavements;
7. Adding or upgrading guardrail, medians and barriers, crash cushions, fencing;
8. Pavement resurfacing or rehabilitation to improve skid resistance;
9. Replacement or rehabilitation of unsafe bridges;
10. Safety roadside rest areas, truck size and weight inspection stations;
11. Addition and upgrading of traffic control devices, (traffic signals, signs, and pavement markings);
12. Lighting improvements; and
13. Truck climbing lanes.

Justification for an exemption on the grounds of safety must be based on accident or other data such as the data derived from a safety management system, bridge management system, the Highway Safety Improvement Program, or the Highway Bridge Replacement and Rehabilitation Program. Such data need not be specific to the proposed project's location but may be based on accident or other data from similar conditions, including national experience where such projects have been implemented to remove safety hazards. For example,

rigid highway sign posts were identified in the past as a safety hazard causing unnecessary deaths and injuries. The identification of this hazard led to national policy requiring rigid posts to be replaced with breakaway poles.

Projects exempted under the safety provision may not involve substantial functional (such as upgrading major arterial to freeways), locational, or capacity changes except when the safety problem could not otherwise be solved. Although substantial changes to the function, location, or capacity have been previously allowed for projects funded under Emergency Relief, such projects could not proceed under sanction.

2. Congressionally Authorized Activities

Seven project types are identified specifically in CAA section 179(b)(1) as exempt from highway sanctions. Essentially these are projects that discourage single occupancy vehicles or improve traffic flow (e.g., intersections, turning lanes) in ways that reduce congestion and emissions:

a. Capital programs for public transit. These include any capital investment for new construction, rehabilitation, replacement, or reconstruction of facilities and acquisition of vehicles and equipment;

b. Construction or restriction of certain roads or lanes solely for the use of passenger buses or high occupancy vehicles (HOV). Exempt projects include construction of new HOV lanes, if those lanes are solely dedicated as 24-hour HOV facilities, and converting existing lanes for HOV use during peak hours, including capital costs necessary to restrict existing lanes (barriers, striping, signage, etc.);

c. Planning for requirements for employers to reduce employee work trip-related vehicle emissions. This also includes promotional and other activities associated with this type of program that are eligible under Title 23;

d. Highway ramp metering, traffic signalization, and related programs that improve traffic flow and achieve a net emission reduction;

e. Fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit operations (this includes the construction of new facilities and the maintenance of existing facilities);

f. Programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration, particularly during periods of peak use, through road use charges, tolls, parking surcharges, or other pricing mechanisms, vehicle restricted zones or periods, or vehicle registration programs; exempt projects include all activities of these types that are eligible under existing funding programs; and

g. Programs for breakdown and accident scene management, nonrecurring congestion, and vehicle information systems, to reduce congestion and emissions.

The FHWA will consult with the EPA on any project claimed to reduce emissions; that is, with projects falling under paragraphs c, d, and g, above. The final authority to determine whether a project meets the criteria in this section and is therefore exempt from highway sanctions, however, rests with the FHWA.

3. Air Quality Improvement Programs That Do Not Encourage Single Occupancy Vehicle Capacity

Transportation programs not otherwise exempt that improve air quality and which would not encourage single occupancy vehicle capacity (as determined by EPA in consultation with DOT) are also exempt from highway sanctions.

For example, transportation control measures (TCMs) listed in section 108(f) of the CAA and projects funded under 23 U.S.C. 149, the Congestion Mitigation and Air Quality Improvement (CMAQ) program, are projects which the EPA and DOT may, after individual review of each project, find to be exempt from highway sanctions. For these projects to advance while highway sanctions are in place, the State must submit to DOT an emissions reduction analysis similar to that required under the CMAQ program. Upon receipt, DOT will forward it to the EPA. The EPA will complete its review and make its finding regarding air quality and single occupancy vehicle travel within 14 days of receipt of such information.

The EPA and DOT have agreed that the following projects will be categorically exempt from highway sanctions, and will not require additional EPA review or an individual finding by EPA:

a. TCMs included in an EPA-approved State Implementation Plan (SIP) or Federal Implementation Plan which have emission reduction credit and will not encourage single occupant vehicle travel;

b. Inspection and maintenance facilities and activities eligible for CMAQ funding;

c. Bicycle and pedestrian facilities and programs; and

d. Carpool/Vanpool programs.

In considering exempt projects, States should seek to ensure adequate access to downtown and other commercial and residential areas, and avoid increasing or relocating emissions and congestion rather than reducing them.

D. Planning and Research Activities

Planning and research activities for transportation and/or air quality purposes are exempt from highway sanctions (except as noted in Section E. Project Development Activities). Such planning and research is critical for the development of projects that improve safety and address an area's transportation/air quality needs. Planning and research activities include development of major investment studies which may be coupled with the draft Environmental Impact Statement or Environmental Assessment. Major investment studies take a multimodal approach in considering transportation alternatives (including new highway capacity) which would be exempt from highway sanctions if advanced as stand alone projects.

Research activities also include those research, development, testing, and planning projects involving the National Intelligent Transportation Systems (ITS) Program. The goal of the ITS Program is to use advanced technology to improve travel and roadway safety without expanding existing infrastructure. ITS activities are generally done under seven broad categories: Travel and transportation management; travel demand management; public transportation operations; electronic payment; commercial vehicle operations; emergency management; and advanced vehicle control and safety systems.

For these reasons, planning and research activities can continue even under highway sanctions. These studies may be carried out with any Title 23 program funds (metropolitan planning, state planning and research, STP, or other programs) under Sections 134, 135, and 307 or other relevant sections.

E. Project Development Activities

Development and completion of studies that are necessary to meet requirements under the National Environmental Policy Act (NEPA) are exempt from highway sanctions as long as consideration of projects that would be exempt under the policy statement, such as transit or other transportation demand management (TDM) measures, are actively pursued as reasonable independent alternatives. Once all alternatives that could be considered exempt from highway sanctions under this policy statement are eliminated, project development activities for NEPA or other purposes are no longer exempt and can no longer be approved if they are to be funded under Title 23. For

example, if prior to completion of NEPA documentation, all TDM measures are eliminated from consideration and the sole remaining question is the determination of an alignment for a highway capacity-expanding project (which may include TDM), subsequent project development activities are not exempt from highway sanctions.

The FHWA may not approve preliminary engineering for final design of a project, nor can approval be granted for a project's plans, specifications, and estimates (PS&E) after initiation of highway sanctions for projects that are not exempt under this policy. Neither right-of-way nor any necessary equipment may be purchased or leased with Federal funds for nonexempt projects while an area is under sanction. Federally-funded construction may not in any way begin on a project that does not meet the exemption criteria described in this policy while an area is under sanction.

Highway sanctions apply to those projects whose funds have not yet been obligated by the FHWA by the date the highway sanction applies. Those projects that have already received approval to proceed and had obligated funds before the EPA imposes the prohibition may proceed even while the area is under sanction, if no other FHWA action is required to proceed. In the case of a phased project, only those phases that have been approved and had obligated funds prior to the date of sanction application may proceed. For example, if preliminary engineering for a project was approved and funds were obligated prior to application of sanctions but no approval was secured for later project phases (such as right-of-way acquisition, construction, etc.), preliminary engineering could proceed while the highway sanction applies but no subsequent phases of the project could proceed with Federal highway funds unless the total project meets the exemption criteria in this policy. These restrictions pertain only to project development activities that are to be approved or funded under Title 23. Activities funded under title 49, U.S.C., or through State or other funds may proceed even after highway sanctions have been imposed unless: (1)approval or action by FHWA under title 23 is required; and (2) they do not otherwise meet the exemption criteria of this policy statement.

F. Other Environmental Requirements

Exemption of a transportation project from the section 179(b)(1) highway sanctions does not waive any applicable requirements under the NEPA (e.g., environmental documents), section 176— of the CAA (conformity requirement), or other Federal law.

Authority: 42 U.S.C. 7509(b); 23 U.S.C. 315; and 49 CFR 1.48.

Issued on: June 22, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–16103 Filed 6–29–95; 8:45 am]

BILLING CODE 4910–22–P

Maritime Administration

[Docket S–921]

Matson Navigation Company, Inc.; Notice of Application for Written Consent Pursuant to Section 506 of the Merchant Marine Act, 1936, as amended, for the Transfer of the President Hoover, President Grant, and President Tyler to the Domestic Trade

Notice is hereby given that Matson Navigation Company, Inc. (Matson), by letter of June 19, 1995, requests a waiver of the provisions of section 506 of the Merchant Marine Act, 1936, as amended (Act), so as to permit Matson to operate in exclusively domestic service during the year commencing December 1, 1995, the U.S.-Flag C–8 containerships the President Hoover, President Grant, and President Tyler (Vessels) not to exceed six months, with respect to each vessel, during that year period. The Vessels were built in the United States with the aid of construction-differential subsidy (CDS), and are currently owned by American President Lines, Ltd. (APL). Matson intends to purchase the Vessel from APL.

Matson states that it intends to use the C–8S both in its Transpacific Alliance (Alliance) service, as well as in its Pacific Coast Shuttle (PCS) service, where they will engage on voyages among Vancouver, British Colombia, Canada; Seattle, Washington; Los Angeles and Oakland, California. The itinerary of the Alliance service vessels westbound will involve departures from California ports with calls at Honolulu and Guam outbound before arrival as Asian ports. The outbound calls at Hawaii and Guam are specifically permitted under section 506 of the Act. Matson explains that due to operational exigencies involved in the start-up of the Alliance service, it is likely that the Vessels will have to be used interchangeably among the Alliance and PCS services for an indefinite period. However, Matson indicates that only two of the Vessels will be used in the PCS service at any time. Acquisition of the C–8s will mean that the PCS can be expanded to a twice weekly service, and that Oakland, CA can be added as port of call.

Any person, firm, or corporation having any interest in the application for section 506 consent and desiring to submit comments concerning Matson's request must by 5;00 p.m. on July 17, 1995, file written comments in triplicate, to the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. The Maritime Administration, as a matter of discretion, will consider any comments submitted and take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.800 Construction-Differential Subsidies (CDS)).

By Order of the Maritime Administrator.

Dated: June 27, 1995.

Joel C. Richard,

Secretary, Maritime Administration.

Federal Transit Administration

Environmental Impact Statement on the Introduction of Transportation Improvements on the East Side of New York County, NY

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The FTA, the Federal Highway Administration (FHWA) and the New York City Transit Authority (NYC Transit) are issuing this notice to advise the public and all other interested parties that in accordance with the National Environmental Policy Act (NEPA), an Environmental Impact Statement (EIS) will be prepared for transportation improvements that will improve mobility on the east side of the island of Manhattan within the City of New York. NYC Transit will ensure that the EIS also satisfies the requirements of the State of New York Environmental Quality Review Act and the intent of the City of New York Environmental Quality Act. The Draft EIS (DEIS) will include a Major Investment Study (MIS) in accordance with the joint FTA/FHWA Metropolitan Planning Requirements, 23 CFR part 450.

High levels of auto congestion in the study area influence the region's ability to meet National Ambient Air Quality standards. The MIS/DEIS process will clearly identify these and other mobility problems in the study area and evaluate any alternative actions generated through the scoping process. Among the alternatives that the MIS/DEIS effort will evaluate are the No-Action and

Transportation Systems Management (TSM) alternatives; a new subway line; light rail transit; elevated rail transit, jitney bus services and ferry services; special bus lanes and fixed bus guideways, including along the Franklin Delano Roosevelt Drive; buses powered by overhead wires; and feasible combinations of options. Scoping will be accomplished through correspondence and meetings with interested persons, organizations, and federal, state and local agencies, and will culminate with centrally located afternoon and evening public meetings.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to James Dubbs, Assistant Director of Government and Community Relations (718) 694–5141, NYC Transit, 130 Livingston St., Room 3011D, Brooklyn, NY 11201 by August 7, 1995. *Scoping Meetings:* Public scoping meetings will be held on Tuesday, July 26, 1995, 3 pm and 6 pm, at Metropolitan Transportation Authority Headquarters, 347 Madison Avenue (between 44th and 45th St.), 5th floor, New York, NY 11007.

FOR FURTHER INFORMATION CONTACT: James Dubbs, NYC Transit Assistant Director of Government and Community Relations at the above address, PHONE: (718) 694–5141, FAX: (718) 488–6539; Letitia Thompson, FTA Deputy Regional Administrator, 26 Federal Plaza, Suite 2940, NY, NY 10278, PHONE: (212) 264–8162, FAX: (212) 264–8973; or Harold Brown, FHWA Division Administrator, Leo O'Brian Federal Building, Albany, NY 12207, PHONE: (518) 431–4127, FAX: (518) 431–4121.

SUPPLEMENTARY INFORMATION

Scoping

FTA, FHWA and the NYC Transit invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated in the EIS and identifying any significant social, economic, or environmental issues related to the alternatives. An information packet describing the purpose of the project, the proposed alternatives, the impact areas to be evaluated, the citizen involvement program, and the preliminary project schedule is being mailed to affected federal, state and local agencies and to interested parties on record. Others may request the scoping materials by contacting James Dubbs at the NYC Transit office at the address above or by calling him at (718) 694–5141. Scoping comments may be made verbally at either of the public scoping meetings or in writing. See the **DATES** section above for locations and times. During scoping, comments should focus on identifying specific social, economic or environmental impacts to be evaluated and suggest alternatives which are less costly or less environmentally damaging while achieving similar transit objectives. Anyone wishing to be placed on a mailing list to receive further information as the project develops should contact James Dubbs as previously described.

Description of the Study Area and Project Need

The study area is approximately 12 miles in length extending in a north/south direction along the east side of the Borough of Manhattan from South Ferry in Manhattan to 164th Street in the Bronx. In the Bronx, the study area boundaries are from St. Ann's Avenue west to the Harlem River. In Manhattan, from 125th Street to Washington Square North, the study area boundaries are from the East River to Fifth Avenue. From Washington Square North (Waverly Place) to Battery Park, the Study Area boundaries are from the East River to Broadway. The Study Area will also include the route of the NYCT Broadway Line (N,R) from 63rd Street to the Whitehall St. South Ferry Station. There are a number of surface and rapid transit routes that enter the Study Area from regions outside the Study boundaries. The Study Area boundaries outlined herein provide a rough guide and are to be considered flexible and dependent upon the outcome of the scoping process.

Removal of elevated transit lines serving north/south routes along Manhattan's east side in the 1940s and 1950s, combined with growth in population and commercial development in that area, have resulted in excess ridership demand on remaining transit facilities. In the 1960s, planning and design work was conducted for a proposed subway line along Second Avenue. Construction of the line was initiated in the 1970s. Though some segments of the Second Avenue Subway were constructed, work was suspended due to fiscal constraints. As a consequence, the demand for subway service in the study area still exceeds supply.

Similar to the subway system, the local north-south arterials in the study area and the Franklin Delano Roosevelt (FDR) Drive are overtaxed during the peak period. The high levels of auto congestion in the study area influences the New York Metropolitan region's ability to meet National Ambient Air Quality standards.

The purpose of the MIS/DEIS process is, in coordination with a regional framework of transportation studies, to thoroughly examine the long term needs and available options for improving mobility in the north/south corridors on Manhattan's East Side and identify a preferred investment strategy that will address the mobility needs in a cost-effective, equitable, and publicly acceptable manner.

This MIS/DEIS effort is in its preliminary stages. While study efforts over the past several months have included a significant amount of data gathering, review of past work, and initial public involvement, public involvement regarding issues and alternatives to be studied are still being sought.

Alternatives

The alternatives proposed for evaluation include: No-Action which involves no change to transportation services or facilities in the corridor beyond already committed projects; the TSM alternative, which consists of low-to-medium cost improvements to the facilities and operations of existing transportation services; Lexington Avenue (4/5/6) subway service improvements, which might include installing new technology signals, higher capacity trains or stations; a north/south subway route, which could extend along part or all of Manhattan's east side (e.g. under Second Avenue); a commuter rail service extension south of Grand Central Terminal; various bus strategies including fixed busways and buses powered by overhead wires, including along the FDR Drive; light rail service; elevated rail service; jitney services; ferry services; and, the introduction of new stations on commuter rail lines north of Grand Central Station and cross-town subway routes east of Lexington Ave.

Other reasonable alternatives proposed during the scoping process will also be considered.

Probable Effects/Potential Impacts for Analysis

FTA, FHWA and NYC Transit plan to evaluate in the MIS/DEIS all social, economic, and environmental impacts of the proposed alternatives. Among the primary issues are the expected increase in transit ridership, impacts on highway and local street usage, the capital outlays needed to construct the project, the cost of operating and maintaining the facilities created by the project, and the financial impacts on the funding agencies. Impacts to the markets outside the study area will be examined as well. Environmental and social impacts for

analysis include land use and neighborhood impacts, traffic and parking impacts near stations, visual impacts, impacts on cultural resources, and noise and vibration impacts. Impacts on natural areas, rare and endangered species, air and water quality, groundwater, and geologic forms will also be covered. The impacts will be evaluated both for the construction period and for the long-term period of operation. Measures to mitigate significant adverse impacts will be considered.

FTA and FHWA Procedures

In accordance with Federal Transit Laws, the Federal Aid Highway Act and FTA/FHWA regulations and policies, the MIS/DEIS will be prepared in conjunction with an analysis of alternatives and initial Conceptual Engineering. After its publication, the MIS/DEIS will be available for public and agency review and comment, and a public hearing will be held. On the basis of the MIS/DEIS and the comments received, and with input from the Project Steering Committee, The Technical Advisory Committee, and the Public Advisory Committee, the Metropolitan Transportation Authority will select a locally preferred alternative for a major investment strategy. The Regional Transportation Plan and Transportation Improvement Plan will be revised to incorporate the selected strategy. Approval will be sought from FTA and FHWA to continue with Preliminary Engineering and to prepare a Final EIS.

Issued on: June 26, 1995.

Thomas J. Ryan,

Regional Administrator, Federal Transit Administration.

[FR Doc. 95–16151 Filed 6–29–95; 8:45 am]

BILLING CODE 4910–57–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 126
Friday, June 30, 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).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 11:02 a.m. on Tuesday, June 27, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Vice Chairman Andrew C. Hove, Jr., and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: June 27, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–16315 Filed 6–28–95; 2:39 pm]
BILLING CODE 6714–01–M

federal register

Friday
June 30, 1995

Part II

Environmental Protection Agency

40 CFR Parts 9, 85, 86, 88 and 600
Control of Air Pollution From New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines; Technical Amendments to the Test Procedures for Methanol-Fueled Motor Vehicles and Motor Vehicle Engines and Petroleum-Fueled Motor Vehicles; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 85, 86, 88 and 600

[AMS-FRL–5203–6]

Control of Air Pollution From New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines; Technical Amendments to the Test Procedures for Methanol-Fueled Motor Vehicles and Motor Vehicle Engines and Petroleum-Fueled Motor Vehicles; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule changes the test procedures previously promulgated for methanol-fueled vehicles (April 11, 1989). These revisions make minor corrections to the procedures, provide additional options, and clarify the Agency's regulatory intent. The changes are expected to allow manufacturers more flexibility in complying with the applicable regulations, without sacrificing accuracy of test results. This action is a part of an ongoing cooperative interaction between Agency staff and the affected automobile and engine manufacturers to develop the most efficient test procedures possible for alternative fuels such as methanol. Among the most significant changes are revisions to the testing requirements for flexible fuel vehicles (FFVs), the allowance of electronic mass flow controllers for methanol and formaldehyde sample systems, the allowance of lower temperatures for some heated components, establishment of wider tolerances for SHED and CVS (Constant Volume Sampler) verifications, and specification of the fuel to be used with all flame ionization detectors. It should be noted that the revision related to flame ionization detectors affects all light-duty vehicles, including gasoline-fueled vehicles.

In compliance with the Paperwork Reduction Act, this rule also displays the Office of Management and Budget (OMB) control numbers issued under the Paperwork Reduction Act (PRA) for the final rules titled ''Emission Standards for Clean-fuel Vehicles and Engines, Requirements for Clean-Fuel Vehicle Conversions, and California Pilot Test Program'' and the ''Standards for Emissions from Natural Gas-Fueled, and Liquified Petroleum Gas-Fueled Motor Vehicles and Motor Vehicle Engines, and Certification Procedures for Aftermarket Conversions''. Also included in this Final Rule are minor changes that were proposed in the ''Gaseous-Fueled Vehicles'' and ''Clean Fuel Fleets'' Notices of Proposed Rulemaking, but were not finalized in the respective Final Rules.

EFFECTIVE DATE: This final rule is effective July 31, 1995, except the amendments to part 9 are effective June 30, 1995.

Sections 85.503, 85.505, 86.094–23, 86.094–24, 86.095–35 86.098–28, 86.113–94, 86.142–90, 86.150–98, 86.513–94, 86.542–90, 86.1242–90, 86.1344–94 published at 59 FR 48472 and § 600.113–93 published at 59 FR 39638 and 48472, containing information collection requirements which have now been approved by OMB, are effective June 30, 1995.

Sections 88.104 (b) and (d), 88.201–94 through 88.206–94, and 88.306–94(b)(1),(2), and (4) published at 59 FR 50042, containing information collection requirements which have been now approved by OMB, are effective June 30, 1995.

ADDRESSES: Material relevant to this rulemaking is contained in the Docket A–92–02. The docket is located at the Air Docket Section (LE–131), U.S. Environmental Protection Agency, Room M–1500, 401 M Street SW., Washington, DC 20460, and may be inspected between 8 a.m. and 3 p.m. Monday through Friday. Information may also be obtained from the U.S. Environmental Protection Agency, Office of Mobile Sources, Regulation Development and Support Division, Engine and Vehicle Regulation Branch, 2565 Plymouth Road, Ann Arbor, MI 48105.

FOR FURTHER INFORMATION CONTACT: Charles Moulis, Regulation Development and Support Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 741–7826

SUPPLEMENTARY INFORMATION:

Introduction

On April 11, 1989, EPA published final regulations which extended the Federal Motor Vehicle Control Program to methanol-fueled vehicles (54 FR 14427). Where possible, the regulations simply applied the existing petroleum-fueled vehicle test procedures to methanol-fueled vehicles. In some cases where that was not possible, it was necessary to incorporate procedures that were more complicated than the procedures used to test petroleum-fueled vehicles. Since that time, several methanol-fueled vehicles have been certified. Overall, the methanol-fueled vehicle test procedures have proven to be accurate and reliable, though some minor issues have been raised.

On March 1, 1993, EPA published a Notice of Proposed Rulemaking (NPRM) proposing several revisions to the test procedures that were established for methanol-fueled vehicles in 1989 (58 FR 11816). This rulemaking was initiated to address the minor issues which arose while implementing the previously promulgated certification procedures for methanol-fueled vehicles. Some of the issues require only a clarification of the Agency's regulatory intent, while others require changes to the test procedures specified in the CFR. The revisions being promulgated today are essentially the same revisions that were proposed, though some of proposed revisions are not being finalized. Also, some of the revisions were modified slightly in response to public comments on the proposal.

The test procedure changes being finalized today include both changes to the existing procedures and allowances for different procedures to be used in place of some of those procedures previously required. The substantive changes are described below. However, the reader is advised to read the actual regulatory language, which is also printed here, for the complete changes.

Also included in this action are minor changes that were proposed in the ''Gaseous-Fueled Vehicles'' (57 FR 52912, November 5, 1992) and ''Clean Fuel Fleets'' (58 FR 32474, June 10, 1993) Notices of Proposed Rulemaking, but were omitted from the regulations of the respective Final Rules. For details, see ''Issues'' 12 and 16

The following discussion is organized by issue. For each issue, there are separate sections describing what was proposed, the public comments and EPA's response to them, and a summary of the changes that are actually being finalized by today's action.

Issues: Proposal, Public Comments, and Final Action

1. Test Fuels

Proposal

Manufacturers of methanol-fueled flexible fuel vehicles (FFVs) have been required to comply with the methanol-fueled vehicle standards when using any fuel mixture within the vehicle's design range. (FFVs are vehicles that are designed to operate using a methanol fuel, gasoline and all mixtures of the two). In order to ensure that such vehicles meet the standards over the full range of fuel mixtures, the previous regulations (e.g., 40 CFR 86.113) required that manufacturers submit test data for worst case fuel mixtures. However, it became apparent that implementation of such an approach is

problematic, because the worst case fuel mixture may vary for the various pollutants. Therefore, rather than attempting to identify a single worst case fuel, the Agency proposed that manufacturers demonstrate compliance by submitting test data for three fuel mixtures during certification. The three proposed mixtures were: the methanol fuel expected to be found in use, gasoline, and the highest volatility mixture. The use of straight methanol fuel (e.g., M85 [1]) and straight gasoline would demonstrate compliance at the two extremes of operation. The high volatility mixture would ensure proper evaporative emissions controls. This mixture was proposed to be approximately M10. The Agency indicated that it would retain the right to perform its confirmatory testing using any mixtures within the design range and to continue to require compliance with the standards over the full range as well.

For mileage accumulation of FFVs, the previous regulations also required the use of the worst case fuel mixtures. For reasons similar to those discussed above, the Agency proposed to allow manufacturers to alternate between the methanol fuel (e.g., M85) and gasoline, at mileage intervals not to exceed 5000 miles. The Agency also proposed requiring that the total volume of the methanol fuel used for mileage accumulation be at least 25 percent, but not more than 75 percent of the total fuel volume used.

The original regulations specified that methanol test fuels be representative of in-use fuels, did not include detailed specifications of test fuel composition, as has been done for gasoline. This issue was discussed in the NPRM, but no revisions to this requirement were proposed.

Public Comments

The American Automobile Manufacturers Association (AAMA) recommended that EPA not require manufacturers to use all three fuels (gasoline, M10, and M85) to demonstrate compliance for each engine family, when the manufacturers certify many methanol-fueled engine families. They argued that the testing burden associated with using three fuels for a large number of engine families would be too great. Instead, AAMA recommended that EPA allow the manufacturers to certify most methanol-fueled engine families using only M85, as long as they tested one or two engine families using all three fuels. While the Agency recognizes that the testing burden using three fuels can be significantly more than using one fuel (as is the case with gasoline), the Agency does not believe the AAMA recommendation is sufficient to demonstrate compliance over the entire range of fuel mixtures for all engine families. Compliance using M85 does not ensure compliance using either gasoline, or M10; and compliance of one FFV engine family using gasoline and M10 does not ensure compliance for all other FFV engine families.

AAMA also disagreed with EPA's proposal to not adopt a permanent and well defined methanol certification fuel specification. They stated that ''it would become difficult, if not impossible, to demonstrate compliance with all fuels if the fuel properties are allowed to drift at random.'' The Agency, however, feels strongly that certification fuel must be representative of in-use fuels. EPA recognizes that test reproducibility is very important, and thus does not wish to have test fuel properties varying randomly. The Agency will issue guidance as to the fuel property specifications which define the representative methanol fuel(s). The specifications will only change to the extent that the fuel market as a whole changes, and EPA does not expect that changes in the specifications will be significant from one year to the next.

A related point that is worth clarifying pertains to the possibility of EPA regulating in-use methanol fuels. While the Agency recognizes that fuel properties such as chloride content (which effects the corrosivity of the fuel), sulfur content (which can effect catalyst efficiency), or vapor pressure (which can effect cold-starting) could impact emissions, it has stated previously that it currently has no plans to regulate commercial methanol fuels. This position has been misinterpreted to mean that EPA has already decided that it will not regulate commercial methanol fuels at any time in the future. However, it is actually probable that EPA would regulate commercial methanol fuels if it became apparent that in-use methanol fuel quality was adversely affecting the environment. The Agency has no current plans to regulate commercial methanol fuels because it is optimistic that methanol fuel suppliers will voluntarily adopt industry-wide standards that will make EPA regulation unnecessary.

Final Action

The Agency will still require that FFVs comply with the standards when operating on any fuel mixture within the design range, but the means by which this compliance is demonstrated is being changed. Rather than attempting to identify a single worst case fuel, manufacturers will now be required to demonstrate compliance by submitting test data for three fuel mixtures during certification. These three mixtures are: the methanol fuel expected to be found in use, gasoline, and the highest volatility mixture. The highest volatility mixture will be M10 (more specifically, it will contain between nine and thirteen percent methanol).

While the Agency will accept testing on the above fuels as an adequate demonstration for certification, it should be emphasized that the Agency will retain the right to perform its confirmatory testing using any mixtures within the design range and will require compliance with the standards over the full range as well.

For mileage accumulation of FFVs, EPA will require manufacturers to alternate between the methanol fuel (e.g., M85) and gasoline, at mileage intervals not to exceed 5000 miles. There is an additional requirement that the total volume of the methanol fuel (e.g., M85) used for mileage accumulation be at least 25 percent, but not more than 75 percent of the total fuel volume used. The Agency believes that these requirements will be sufficient to demonstrate the durability of FFVs in use, where the vehicles may be operated on only methanol, only gasoline, or alternately on both fuels. EPA is not dictating which test fuel mixtures should be used for the emissions tests performed to determine deteriorations factors, but the Agency is currently recommending that deterioration factors be determined for both the alcohol fuel and the gasoline fuel.

Implicit in the rationale for the approach discussed above is the assumption that there would be a reasonable possibility that a significant number of in-use FFVs would be operated using both M85 and gasoline. This assumption, however, would not necessarily be valid for FFV models which had a very significant drop in performance when fueled with gasoline. If the drop in performance were so drastic that the vehicle became only marginally functional, then it would be very unlikely that the vehicle operator would fuel the vehicle with gasoline unless it were an emergency situation,

[1] Methanol fuels are commonly identified by their methanol content using the abbreviation MXX, where XX is the volumetric percent of the fuel which is methanol. M85, which is currently the most common methanol fuel for light-duty vehicles, contains 85 percent methanol and 15 percent gasoline.

where the fuel tank was empty and no methanol fuel was available. Such a vehicle is said to have only ''limp home'' capability when operated with gasoline. The Agency recognizes that it would be reasonable for these vehicles to be considered dedicated methanol-fueled vehicles for the purposes of certification, and thus to be certified using only methanol fuel (M85) for emissions testing and mileage accumulation. The regulations have been modified to make this clear. Manufacturers should obtain written approval to classify such vehicles as dedicated vehicles from the Administrator prior to the start of testing. In determining how to classify such vehicles, the Administrator would consider the significance of the drop in performance using gasoline, the expected availability of methanol fuel, and the expected vehicle use (i.e, personal, taxi fleets, delivery vehicles, etc.). For example, a methanol-fueled vehicle which lost 80 percent of its normal power when using gasoline could be considered a dedicated vehicle; although, if the vehicle was designed to be significantly overpowered, and still had adequate acceleration with only 20 percent of its normal power, it would not be considered a dedicated vehicle.

The regulations still do not specify methanol test fuels more precisely than to require that the methanol test fuels be representative of in-use fuels. The broad nature of this requirement is the result of EPA's previous experience with gasoline. Because in-use gasolines changed so significantly from the fuel used in certification, especially in the area of vapor pressure, it became necessary for the Agency to promulgate extensive regulations for in-use gasoline. The Agency hopes that regulation of in-use methanol fuel quality will not be necessary, and that industry-wide methanol fuel standards will be adopted on a voluntary basis. Such standards would be accepted by EPA as appropriate certification fuel standards, assuming that in-use fuels consistently complied with the standards, since it would ensure that the certification fuel is representative of in-use fuels. EPA recognizes that, since the current market for methanol fuels is not well defined, it is not possible at this time to determine one methanol fuel that is truly representative of in-use fuels in all respects. For previous certification of methanol-fueled vehicles, the Agency decided that mixtures of chemical grade methanol and certification gasoline were sufficiently representative to ensure that certification emissions results would accurately reflect the behavior of in-use methanol-fueled vehicles using market fuels. This approach is consistent with the California Air Resources Board certification fuel specifications, except that California's specification [2] does not require that the methanol be chemical grade, and that it requires the use of California's certification gasoline. Therefore, until such time that the methanol fuel market is large enough to allow a better determination of a representative fuel or until industry-wide standards are adopted by fuel suppliers, the Agency will use, and require manufacturers to use either a combination of chemical grade methanol and certification gasoline in proportions that reflect the composition of the intended in-use fuel, or California's certification methanol fuel. For current M85-fueled vehicles this will be 84–88 percent (by volume) methanol and the remainder gasoline. For M100-fueled vehicles, the fuel will be neat chemical grade methanol, although it may contain small amounts of fuel additives, provided that the manufacturer can demonstrate that those same additives will be included in the in-use fuel.

2. Methanol and Formaldehyde Sampling and Analysis

Proposal

The original regulations for methanol-fueled vehicles specified separate sampling systems for methanol and formaldehyde. In the NPRM for this action, the Agency proposed revisions in several areas related to these requirements, although the most basic aspects of the requirements remain unchanged. Under the proposed regulations, the samples would still be collected by bubbling the sample gas through two impingers, or, in the case of formaldehyde, through a cartridge impregnated with dinitrophenylhydrazine (DNPH); and the impinger fluid or cartridge would still be analyzed for methanol or formaldehyde using chromatographic methods.

The most significant of the proposed changes affected the required sampling flow rates. The previous regulations included minimum requirements for flow rates through impingers and cartridges. They were included to ensure that sufficient amounts of methanol and formaldehyde are collected to allow for accurate detection by the chromatographic instruments. Because there can be significant variations from system to system, however, a single minimum flow rate is not appropriate for all systems. To correct this, the Agency proposed to eliminate these minimum flow rates, and to instead establish minimum concentrations for the primary impingers and cartridges. More specifically, EPA proposed that systems (and procedures) be required to be designed such that testing of a vehicle or engine that emitted the maximum allowable level of methanol, or emitted formaldehyde at a level that was ten percent of the maximum emission level of methanol would result in analyte concentrations that were 25 times higher than the levels of detection for the instruments used. Systems that did not meet this requirement due to high limits of detection were to be allowed, provided that the resultant methanol concentration was greater than 25 mg/l, and the resultant formaldehyde concentration is greater than 2.5 mg/l. For any vehicles or engines that have an applicable formaldehyde standard, the analyte concentrations used for design would be those that would result from the maximum emission level allowed by that standard. The Agency also proposed to add an additional design requirement that the amount of methanol collected in the secondary impinger not be more than ten percent of the total amount collected.

Another set of proposed revisions dealt with the method of flow measurement. In several parts of the previous regulations, dry gas meters were specifically required for sampling and calibration systems. This was because dry gas meters were considered to be the most appropriate type of flow meter for these applications at the time the test procedures for methanol-fueled vehicles were originally developed. It has became apparent, however, that these specifications were no longer necessary. Therefore, the Agency proposed to allow other types of flow meters to be used, provided that they meet an accuracy specification of ±2 percent.

Public Comments

The comments received regarding methanol and formaldehyde sampling and analysis were generally supportive of the Agency's proposals. Some of the comments, however, requested clarification of regulatory language. In response, EPA has modified the regulatory language regarding the design requirements for sample flow rates, the use of secondary impingers and cartridges, and the accuracy specifications for sample flow meters.

[2] California Code of Regulations, Title 13, Section 2292.

Final Action

Sampling systems (and procedures) will be required to be designed such that testing of a vehicle or engine that emitted the maximum allowable level of methanol (e.g., 0.95 g/mi methanol, or 14 g/FTP, for a 0.41 g/mi THCE [3] standard), or emitted formaldehyde at a level that was twenty percent of the maximum emission level of the lowest applicable THCE or NMHCE (e.g., 0.082 g/mi formaldehyde, or 1.2 g/FTP, for a 0.41 THCE standard) during the first phase of the test would result in analyte concentrations that were at least 25 times higher than the levels of detection for the instruments used. As proposed, systems that do not meet this requirement due to high limits of detection will be allowed, provided that the resultant methanol concentration is greater than 25 mg/l, and the resultant formaldehyde concentration is greater than 2.5 mg/l. For any vehicles or engines that have an applicable formaldehyde standard, the analyte concentrations used for design would be those that would result from the maximum emission level allowed by that standard. The Agency is also requiring that the amount of methanol collected in the secondary impinger not be more than ten percent of the total amount collected.

Also, the Agency will allow other types of flow meters to be used, provided that they meet the accuracy specifications of §§ 86.120–90 or 86.1320–90. The specifications of these sections require accuracy of ±1 percent of the maximum operating range and ±2 percent of the reading.

3. Proportional Sampling

Proposal

Prior to this action, there were only two methods allowed by the regulations for obtaining proportional samples when testing light-duty vehicles: the Positive Displacement Pump-Constant Volume Sampler (PDP–CVS) method and the Critical Flow Venturi-Constant Volume Sampler (CFV–CVS) method. However, EPA proposed a third option for methanol-fueled vehicles. This method is based on the current CFV–CVS system, but allows proportional sampling of methanol and formaldehyde to be maintained by electronically monitoring the CVS flow rate and electronically controlling the sample flows. Similar approaches have been used for some years in heavy-duty diesel testing and in light-duty research testing. When using this approach, the ratio of sample flow to CVS flow was to be required to remain within ±5 percent of the set-point ratio.

Public Comments

AAMA supported the Agency's proposals, and added that flow controllers should vary the sample flow rate inversely with the square root of the bulk stream temperature. EPA agrees, and has added such language to the regulations.

Final Action

EPA is finalizing this revision as proposed. The Agency is not requiring that these electronically-controlled sampling systems also include separate flow meters to measure total sample volumes, but will allow them. It should be emphasized that even though this option is only being specified for methanol and formaldehyde sampling systems, the Agency would consider allowing similar approaches for other samples as equivalent procedures. (For example, paragraph (a)(5) of § 86.109–94 specifically allows the use of sampling procedures other than those specified in that section, provided that they can be shown to ''yield equivalent or superior results''.)

4. Prevention of Condensation

Proposal

Exhaust from methanol-fueled vehicles generally has much higher water vapor content than conventional vehicles, which can lead to water condensation under certain testing conditions, when the gas comes into contact with surfaces at temperatures below its dew point. Such condensation can create very significant problems with respect to testing accuracy, since both methanol and formaldehyde are soluble in water. However, if the gas comes into contact with very hot surfaces, the methanol can undergo decomposition reactions. For these reasons, in the previous rulemaking, EPA required that sample lines and transfer systems be heated to 235±15 °F (as measured at the surface in contact with the raw and diluted exhaust gases). Some manufacturers, however, have indicated a concern that this temperature requirement may be too high for their systems. The Agency proposed to change its regulatory focus from specifying the temperature requirement, toward allowing manufacturers to determine the most appropriate temperatures for their own individual systems. The requirements to heat many of the components remained, but EPA proposed changing the lower limit to the maximum dew point of the exhaust mixture. Comments were requested on whether it will be necessary to measure dew point continuously for each test.

It had also been suggested that heavy-duty engine manufacturers should be allowed to use ducts up to 32 feet in length to transfer the exhaust from the engine to the dilution tunnel. Testing by Southwest Research Institute (SwRI) showed no significant difference between the emission results from test systems using ducts 13 and 32 feet in length.[4] Therefore, the Agency proposed to allow transfer ducts up to 32 feet in length (as is currently allowed for petroleum-fueled engines). However, since the SwRI testing did not provide data for systems in which the duct temperature exceeded 315 °C, this allowance required that the maximum duct temperature not exceed 315 °C.

EPA also proposed allowing heating and dehumidifying the dilution air, with some restrictions. The proposed restrictions limited the maximum temperature and affect how the dilution air flow rate is calculated.

Public Comments

The comments received regarding the prevention of condensation were generally supportive of the Agency's proposals. AAMA stated that, based on their testing experience, measurement of the dew point is not necessary, provided that dilution systems are designed properly. EPA agrees that continuous measurement of the dew point is not necessary, and thus will also allow the absence of condensation to be demonstrated through engineering analyses.

Detroit Diesel Corporation (DDC) supported EPA's proposal to allow longer unheated exhaust transfer ducts for heavy-duty engines, but requested that the Agency raise the maximum temperature from 315 °C (as proposed) to 350 °C. Further, they indicated that they believed that a limit on the average temperature of the duct would be more appropriate than a limit on the maximum temperature.

EPA recognizes that the 315 °C limit was based on testing of only one engine, and that other larger engines could easily result in higher temperatures of the duct. However, the Agency does not consider it to be unreasonable to expect manufacturers to make the slight modifications to the duct that would be necessary to prevent the maximum duct temperature from exceeding 315 °C. Simple modifications such as the

[3] THCE and NMHCE are replacing OMHCE and OMNMHCE; see discussion in ''15. Other Issues.''

[4] ''Effect of Exhaust Pipe Length on Emissions From a Heavy-Duty Methanol Engine,'' SwRI–4962, May 1992, Docket Item A–92–02–II–D–7.

addition of fins, or the use of cooling fans, should be able to increase the heat transfer away from the duct sufficiently to allow the systems to comply with this requirement even when testing larger engines. The Agency also does not agree that a limit on the average temperature would be more appropriate. While it is true that controlling the average temperature would account for the length of time that the exhaust is exposed to the higher temperatures, it would allow the exhaust to be exposed to very high temperatures. Therefore, EPA has decided that a limit on the maximum temperature is appropriate at this time, especially given the increased complexity of determining the average temperature of the duct instead of only the maximum temperature.

Final Action

The Agency has changed its regulatory focus from specifying the temperature requirement, to allowing manufacturers to determine the most appropriate temperatures for their own individual systems. However, EPA is establishing a lower limit of 5 °F above the maximum dew point of the exhaust mixture, instead of the maximum dew point as was proposed. The previously established maximum upper temperature of 250 °F remains in effect. Although these limits provide slightly less additional flexibility than was proposed, the Agency believes that they allow for a sufficiently wide range of temperatures. This revision is not intended to imply that the Agency no longer believes that the appropriate temperature range for most systems is 220–250 °F, but rather it is intended only to allow the manufacturers more flexibility. Manufacturers must demonstrate that their systems will prevent condensation from occurring, and will be allowed to do so using engineering analyses, such as dew point data from testing under some worst case conditions (*e.g.*, with a large engine during a period of high ambient humidity).

EPA is also revising the regulations to allow heavy-duty engine manufacturers to use longer unheated ducts to transfer the exhaust from the engine to the dilution tunnel. The Agency will allow transfer ducts up to 32 feet in length, but will require that the maximum duct temperature not exceed 315 °C. EPA recommends that steps be taken to minimize the temperature increase in the transfer duct to reduce the possibility of the methanol and formaldehyde reacting on the walls of the transfer duct.

Today's rule also specifically allows heating and dehumidifying the dilution air, with some minor restrictions. Allowing such pretreatment of the dilution air may help to eliminate some of the condensation problems associated with methanol-fueled vehicles, and may allow the use of lower system temperatures as discussed above. The restrictions limit the maximum temperature and affect how the dilution air flow rate is calculated.

5. CVS and SHED Calibration and Retention Tests

Proposal

The regulations promulgated in 1989 required that, in addition to tests previously required for propane, tests also be perfomed to ensure that there are no losses of methanol in the CVS or SHED. The regulations specified injecting a known quantity of methanol or propane into the CVS or SHED, collecting a sample and comparing the amount calculated from the measured value to the amount injected. The regulations required, for methanol, that the measured value be within two percent of injected value. However, actual testing experience by both EPA and industry has shown that consistently obtaining results within two percent can be problematic given the current state of development of methanol test procedures. Therefore, EPA proposed to establish wider limits (±6 percent) for methanol recoveries during the calendar years 1992–1995. For SHED testing, these wider limits were to apply to both agreement between the amount injected and the initial measured amounts (recovery tests) and between the initial and final (after four hours) measured amounts (retention tests). EPA requested comments regarding whether it was sufficient to widen the tolerances through 1995, or if a longer period were required.

The Agency also proposed to require the use of a correction factor that would be derived from the four-hour retention test. This was to be a means of accounting for potential losses without increasing the testing burden.

Public Comments

AAMA supported permanently widening the tolerances for CVS and SHED recovery and retention tests for methanol to ±6 percent. They stated in their comments that they ''do not believe that a 2 percent limit will be achievable in the near future.'' EPA recognizes that, at this time, complying with a 2 percent tolerance is not possible without an unreasonable test burden. This is due in large part to the imprecision of the GC analysis, which AAMA estimated at ±5 percent. This imprecision could be reduced by performing multiple GC analyses, although this would lead to a significant increase in costs. When the vehicles are tested for compliance with a carbon equivalence-based standard, however, the accuracy of the methanol measurement becomes less important. Since the test procedure determines the emissions of non-oxygenated HC by subtracting the methanol FID response from the total FID response, an undermeasurement of methanol will lead to an overmeasurement of HC, and vice versa. Thus the net impact of the accuracy of the methanol measurement on the accuracy of the calculated THCE emission rate is reduced. However, EPA continues to believe that the 2 percent tolerance will ultimately be achievable, and that this level of accuracy is appropriate. Therefore, the Agency will maintain this specification, but will allow manufacturers to request a waiver from the required 2 percent tolerance after 1995, as described below.

AAMA opposed the use of correction factors for SHED testing. They argued that correction factors are not necessary, and would be ''inconsistent with previous test requirements.'' EPA recognizes AAMA's concerns. More importantly, however, the Agency believes that the potential for losses can be addressed under the waiver provisions being established today (see Final Action section below). Therefore, EPA is not finalizing the proposed correction factor requirements.

Final Action

EPA is establishing a wider tolerance of ±6 percent for methanol recovery and retention during the calendar years 1992–1995, as was proposed. After 1995, the Agency will allow manufacturers to request a waiver from the required tolerance (e.g., ±2 percent), provided that:

(1) The Administrator determines that compliance with the specified tolerance is not practically feasible, and

(2) The manufacturer makes information available to the Administrator which indicates that the calibration tests and their results are consistent with good laboratory practice, and that the results are consistent with the results of calibration testing conducted by the Administrator, and

(3) The manufacturer complies with higher tolerances (up to ±6 percent for recoveries and ±8 for retention), as specified by the Administrator.

In deciding whether to grant the waiver, and what the tolerances should be under the waiver, EPA will be

concerned primarily with the degree to which any imprecision and inaccuracy in the methanol sampling and measurement techniques would affect its ability to determine compliance with emission standards. More specifically, this means that the precision (repeatability) of methanol measurements should be as good as is practically feasible, and that there should be no losses in the system that would lead to a significant undermeasurement of methanol. The determination of practical feasibility will depend on the degree to which variability can be reduced and the costs associated with the reduction. EPA recognizes that the standard for precision that is ''consistent with good laboratory practice'' will change with time, and will use its own testing as the standard. That means that manufacturers will be required to have precision that, in the Administrator's judgement, is essentially as good as that of EPA.

6. Fuels for Flame Ionization Detectors

Proposal

Flame ionization detectors measure hydrocarbons and other organics by ionizing the carbon atoms with a supplemental fuel source. At one time, the primary fuel was a mixture of hydrogen in nitrogen (H_2/N_2), but now the more commonly used fuel is a mixture of hydrogen in helium (H_2/He), which is thought to give a more accurate response. In the previous regulations, it was somewhat unclear what type of fuels were to be used with the heated flame ionization detectors (heated FID or HFID) required for methanol-fueled vehicle testing. Evaporative emissions testing and heavy-duty exhaust testing required the use of H_2/He, while the fuel for light-duty exhaust testing was previously unspecified. Since the light-duty fuel was unspecified, many testing facilities have used a mixture of hydrogen in nitrogen. To eliminate this confusion, the Agency proposed to clearly require that H_2/He fuel be used for all FIDs when testing methanol-fueled vehicles. Moreover, to provide consistent testing of both alternatively-fueled and conventionally-fueled vehicles, the Agency proposed to require the use of H_2/He fuel for all heated and unheated FIDs. The Agency also requested comments on whether revisions are needed to the FID calibration procedure as outlined in the CFR.

Public Comments

AAMA agreed with EPA's proposal to require that hydrogen/helium mixtures be used as the fuel for all flame ionization detectors (FIDs). AAMA also recommended that EPA add a requirement to optimize the FID to make the response of methane (relative to propane) as close to one as possible. The Agency agrees that optimizing the FID to reduce variations in response factors is good engineering practice. However, EPA has not seen evidence that FIDs are currently being improperly calibrated, and thus does not believe that it is necessary to include such a provision in the regulations at this time. EPA will continue to consider this issue, and may propose further specifications for the calibration of FIDs at a later time.

Final Action

EPA is finalizing this revision as proposed, and will require the use of H_2/He fuel for all heated and unheated FIDs.

7. Background Measurements

Proposal

The test procedures call for measurement of background concentrations of various gases, including methanol and formaldehyde, to be subtracted from the concentrations measured in the diluted exhaust. Previously, only a single sample was required for formaldehyde, while separate phase-by-phase samples were required for methanol. However, for the purpose of consistency, EPA proposed to also require only a single sample be collected to determine the methanol concentration in the dilution air. It was also noted that, since methanol levels in the dilution air will generally be very low, a single impinger is sufficient to measure the methanol concentration in the sample.

Public Comments

The comments received regarding the background measurements were generally supportive of the Agency's proposals. DDC requested that EPA clearly state in the regulations that background measurements are optional for manufacturers. EPA agrees, and has added such language.

Final Action

EPA is finalizing this revision as proposed, and is also adding regulatory language that states that background measurements are optional for manufacturers.

8. Determination of Fuel Composition

Proposal

The regulations previously did not specify a procedure to determine the carbon:hydrogen:oxygen ratio for methanol fuels and fuel mixtures, other than to state that the ratio was to be measured. However, if the methanol fuel and/or fuel mixtures are made from fuels for which the ratios are known (such as chemical grade methanol and Indolene), then the ratio for the resultant mixture can be calculated and no measurement is necessary. EPA proposed to revise the regulations to allow for calculation of the ratio for methanol fuels and fuel mixtures.

Public Comments

The comments received regarding the determination of fuel composition were supportive of the Agency's proposals.

Final Action

EPA is finalizing this revision as proposed.

9. NO_X Humidity Correction Factor

Proposal

The humidity of the air in a test area is known to have an effect on emissions of NO_X, and EPA has established a correction factor for NO_X test results. It became apparent that the correction factor established for heavy-duty methanol-fueled engines is erroneous. EPA proposed to correct this by applying the correction factor currently specified for gasoline-fueled engines to Otto-cycle methanol-fueled engines, and the one currently specified for petroleum-fueled diesel engines to methanol-fueled diesel engines, as was originally intended.

Public Comments

EPA received no comments regarding this issue.

Final Action

EPA is finalizing this revision as proposed.

10. Heated Flame Ionization Detectors

Proposal

The regulations previously required that heated FIDs (HFIDs) be used when testing methanol-fueled vehicles. The reason for this requirement was that HFIDs provide a stable response for methanol more quickly than unheated FIDs. Some manufacturers have suggested, however, that in many cases the HFID is not necessary and that an unheated FID is adequate. EPA proposed to allow unheated FIDs to be used in place of heated FIDs for methanol-fueled vehicle testing.

Public Comments

The Agency received mixed comments in response to this proposed revision. AAMA supported the use of

unheated FIDs for methanol-fueled vehicle testing, though they indicated that they believe that it would be appropriate to require that each test lab provide data to demonstrate equivalence between their unheated FID and a heated FID, for their exhaust systems. The New York State Department of Environmental Conservation (NYDEC) commented that aromatic organics and large aliphatics can be lost to unheated surfaces in sampling systems. They recommended that heated FIDs should be used not only for testing methanol-fueled vehicles, but for testing petroleum-fueled vehicles as well. Based on these comments, and data from EPA testing (see Docket A–92–02), it is clear that unheated FIDs can be used for methanol testing in some systems, but that there is the potential for measurement problems in other systems. EPA will allow unheated FIDs to be used in place of heated FIDs for evaporative testing of methanol-fueled vehicles. The Agency will also allow the use of unheated FIDs for exhaust testing, where there appears to be a greater potential for measurement problems, but only after the manufacturer demonstrates equivalence with the heated FID for its system. EPA did not propose requiring heated FIDs for gasoline-fueled vehicle testing and has not yet received sufficient information that it is necessary.

Final Action

EPA will allow unheated FIDs to be used in place of heated FIDs for evaporative testing of methanol-fueled vehicle testing. The Agency will also allow the use of unheated FIDs for exhaust testing, provided that the manufacturer can demonstrate equivalence with the heated FID for its system.

11. Gaseous Standards for Methanol and Formaldehyde

Proposal

Gaseous standards of many gases have been specified in the regulations and have been routinely used in calibration procedures; however, such standards were not allowed for methanol and formaldehyde. EPA proposed to allow the use of gaseous methanol standards for response factor calculation, with the requirement that the concentration of methanol in the standard gas not vary by more than two percent over its useful lifetime (i.e., from the time it is prepared until it is no longer used for testing).

Public Comments

AAMA supported EPA's proposal to allow the use of gaseous methanol standards for the determination of the FID response to methanol. However, they suggested that EPA widen the tolerance for stability to ±4 percent (instead of ±2 percent) to account for variability in the measurement of methanol. They also suggested that EPA allow bottles that exceed this tolerance to be renamed with the new concentration. The Agency recognizes that the variability associated with measuring methanol makes it possible that the measured concentration of methanol could be outside the ±2 percent tolerance, even though the true concentration had not changed by more than 2 percent. Therefore, EPA has added regulatory language that clarifies that the ±2 percent tolerance is for a reasonable estimate of the true concentration, taking into account measurement variability, not necessarily a single measurement. The Agency envisions that manufacturers will use an average of multiple measurements to determine the concentration, and will make enough measurements so that the precision of the estimate is ±2 percent. Also, EPA agrees that standards that change by more than 2 percent can be renamed with the new concentration, provided that the change is not greater than 10 percent.

Final Action

EPA will allow the use of gaseous methanol standards for response factor calculation, with the requirement that the concentration of methanol in the standard gas shall not vary by more than two percent, without being relabeled with the new concentration.

12. Idle CO Testing

Proposal

In the 1989 FRM, EPA established idle CO emission standards for all methanol-fueled light-duty trucks and heavy-duty engines, including heavy-duty diesel engines. In the NPRM for this current rulemaking, EPA proposed to modify the testing provisions to allow for continuous analysis instead of bag sampling and analysis. This was done to be consistent with § 86.1310, which allows continuous CO analysis for transient testing of diesel cycle engines.

Public Comments

EPA received no comments regarding this issue.

Final Action

EPA is finalizing this revision as proposed.

In a related matter, EPA is correcting §§ 86.094–9 and 86.097–9 to clarify that the idle CO standards of those sections are applicable to gasoline-fueled, methanol-fueled, LPG-fueled and CNG-fueled light-duty trucks. The applicability of these standards to LPG-fueled and CNG-fueled light-duty trucks was specified in the Preamble of the FRM which established standards and test procedures for gaseous-fueled vehicles (FR), but the regulatory text of these sections was not revised to reflect this requirement.

13. Direct Measurement of Non-Oxygenated Hydrocarbons

Proposal

Evaporative non-oxygenated hydrocarbon emissions from methanol-fueled vehicles have been measured by separately measuring total organic emissions and methanol emissions: the non-oxygenated hydrocarbon emissions are the difference between these two measurements. It had been suggested, however, that non-oxygenated hydrocarbons can be measured directly by installing water-filled impingers upstream of an FID calibrated on propane. The impingers would be expected to remove the methanol from the gas as it is bubbled through the water, but not the non-oxygenated hydrocarbons. The Agency proposed to revise the regulations to allow this option.

Public Comments

The comments received indicate that the technique which was proposed to measure non-oxygenated HC directly for methanol-fueled vehicles is not sufficiently accurate at this time.

Final Action

EPA is not finalizing this option in this action.

14. FID Measurement of Methanol Emissions From M100 Vehicles

Proposal

Methanol emissions from M100 vehicles have been measured with an impinger system. The combined emissions of methanol and non-oxygenated HC have been measured by a FID and the non-oxygenated HC emissions have been determined by subtracting the methanol (after correcting for FID response) from the total. However, when the non-oxygenated HC emissions are small, there is a significant potential for errors. Because the amount of non-oxygenated HC emissions from M100 vehicles and engines is generally small, EPA proposed to allow measurement of the

total emissions with an FID calibrated on methanol, as has already been allowed through model year 1994.

Public Comments

AAMA supported this option to some extent, but felt that EPA should not use this option for its testing. At this time, EPA believes that the available information is not sufficient to support continuation of this option beyond the 1994 model year.

Final Action

EPA is not finalizing this option in this action.

15. Collection of Methanol Samples

As noted above, methanol samples have been collected using impingers. EPA also proposed, however, allowing two alternative methods. The first was the allowance to measure methanol concentrations from SHED testing by direct GC analysis of the bag samples. The second alternative was the allowance of the use of cartridges, which are designed to collect methanol, for both exhaust and evaporative testing.

Public Comments

The comments received regarding the measurement of methanol by GC-bag analysis or from methanol cartridges do not support either of the proposed approaches at this time.

Final Action

EPA is not finalizing either approach in this action.

16. Other Issues

AAMA indicated that the tolerance of ±0.5 percent for the liquid methanol injection device used during CVS and SHED calibration may not be achievable at this time. EPA agrees, especially since manufacturers will still be required to comply with the recovery and retention tolerances specified by the Administrator. Thus, the Agency is allowing less precise methods to be used. This change will not effect the accuracy or precision of certification emissions tests.

AAMA requested that the Agency require the determination of the FID response to methanol only twice annually, instead of monthly. However, EPA believes that the response factor should be calculated each time the FID is recalibrated, on a monthly basis.

EPA is replacing the terms ''Organic Material Hydrocarbon Equivalent'' (OMHCE) and ''Organic Material Non-Methane Hydrocarbon Equivalent'' (OMNMHCE) with ''Total Hydrocarbon Equivalent'' (THCE) and ''Non-Methane Hydrocarbon Equivalent'' (NMHCE). These new terms are simpler and are more obviously related to the comparable terms being used for petroleum-fueled vehicles (THC and NMHC). This change does not have any substantive effect on the certification process.

Finally, included among the regulatory revisions in this FRM are minor changes that allow the test procedures specified for measuring formaldehyde from methanol-fueled heavy-duty engines to be used to measure formaldehyde from other types of engines. These changes were originally proposed in the ''Clean Fueled Fleets'' NPRM (58 FR 32474, June 10, 1993), but were not finalized. The purpose of the changes is to provide a means of measuring formaldehyde from non-methanol fueled heavy-duty ULEV engines that have to comply with a separate formaldehyde standard. In general, the changes are nothing more than removing references such as ''for methanol-fueled engines'' that are associated with the formaldehyde measurement procedures, and replacing those references with ''as applicable.''

OMB Approval of Information Collection Requirements for CFV Emission Standards and Gaseous Fuels Rulemakings

EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. Today's amendment updates the table to accurately display those information requirements promulgated under Emission Standards for Clean-fuel Vehicles and Engines, Requirements for Clean-Fuel Vehicle Conversions, and California Pilot Test Program which appeared in the **Federal Register** on September 30, 1994 (59 FR 50042) and under Standards for Emissions From Natural Gas-Fueled, and Liquefied Petroleum Gas-Fueled Motor Vehicles and Motor Vehicle Engines, and Certification Procedures for Aftermarket Conversions which appeared in the **Federal Register** on September 21, 1994 (59 FR 48472). The affected regulations are codified at 40 CFR Parts 9, 85, 86, 88, and 600. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This display of the OMB control numbers and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

Environmental and Economic Impacts

This regulation is intended only to reduce the administrative and testing burden of certifying methanol-fueled vehicles. It does not affect the stringency of emission standards. Thus, it should have no impact on the environment.

This regulation does provide manufacturers some additional flexibility, and will result in minor economic benefits. These economic benefits, however, are expected to be small.

Statutory Authority

The statutory authority for this action is provided by sections 202(a) (1)–(2), 206, 301(a) of the Clean Air Act (42 U.S.C. 7521(a), 7525, and 7601(a)).

Administrative Designation and Regulatory Analysis

Under Executive Order 12866, EPA must judge whether a regulation is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. This regulation is not a ''significant regulatory action'' because the amendments make only minor and technical changes.

This Amendment to the final rule is not subject to the Office of Management and Budget's review under the Executive Order and no Regulatory Impact Analysis was prepared.

Reporting and Recordkeeping Requirements

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq and have been assigned control number 2060–0104. An Information Collection Request document has been prepared by EPA (ICR No. 783.21) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (2136); Washington, DC 20460 or by calling (202) 260–2740.

Public reporting burden for this collection of information is estimated to have a negligible effect on the existing clearance which averages 15,900 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of the information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including

suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.''

All the information collection requirements for both the CFV Emission Standards and Gaseous Fuels Emission Standards rulemakings have been approved by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned either control number 2060–0104 or 2060–0314.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act. 5 U.S.C. 601 et seq., the Administrator of EPA is required to determine whether a regulation will have a significant economic impact on a substantial number of small entities and, if so, to perform a regulatory flexibility analysis. The technical amendments contained in this rulemaking will not increase the burden or cost of compliance for any segment of the automotive industry. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Gasoline, Labeling, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: April 28, 1995.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, parts 9 and 86 of title 40 of the Code of Federal Regulations are amended as follows:

PART 9—[AMENDED]

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

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

1a. Section 9.1 is amended in the table by adding in numerical order new entries under the center headings ''Control of Air Pollution From Motor Vehicles and Motor Vehicle Engines,'' ''Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures,'' ''Clean-Fuel Vehicles'' and ''Fuel Economy of Motor Vehicles,'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Control of Air Pollution From Motor Vehicles and Motor Vehicle Engines	
85.503	2060–0104
85.505	2060–0104
* * * * *	
Control of Air Pollution From New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures	
* * * * *	
86.094–24(a)(3)(iii)	2060–0314
* * * * *	
86.098–28	2060–0104
* * * * *	
86.150–98	2060–0104
* * * * *	
86.513–94	2060–0104
* * * * *	
86.1344–94	2060–0104
* * * * *	
Clean-Fuel Vehicles	
* * * * *	
88.204–94(b)(1)	2060–0314
88.204–94(c)	2060–0314
* * * * *	
88.306–94(b)(1)	2060–0314
88.306–94(b)(2)	2060–0314
88.306–94(b)(4)	2060–0314
88.306–94(c)	2060–0314
88.306–94(f)	2060–0314
40 CFR citation	OMB control No.
* * * * *	
Fuel Economy of Motor Vehicles	
* * * * *	
600.113–93	2060–0104
* * * * *	

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1b. 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)).

2. Section 86.001–21 of Subpart A is amended by removing paragraphs (c) through (k) and adding paragraphs (c) through (l) to read as follows:

§ 86.001–21 Application for certification.

* * * * *

(c) through (j) [Reserved]. For guidance see § 86.094–21.

(k) and (l) [Reserved]. For guidance see § 86.096–21.

3. Section 86.090–2 of Subpart A is amended by revising the definition of ''Flexible fuel vehicle (or engine)'', removing the definition of ''Organic Material Hydrocarbon Equivalent'' and adding the definitions of ''Dedicated vehicle (or engine)'' and ''Total Hydrocarbon Equivalent'' in alphabetical order to read as follows:

§ 86.090–2 Definitions.

* * * * *

Dedicated vehicle (or engine) means any motor vehicle (or motor vehicle engine) engineered and designed to be operated using a single fuel. Flexible fuel vehicles and multi-fuel vehicles are not dedicated vehicles.

* * * * *

Flexible fuel vehicle (or engine) means any motor vehicle (or motor vehicle engine) engineered and designed to be operated on a petroleum fuel, a methanol fuel, or any mixture of the two. Methanol-fueled vehicles that are only marginally functional when using gasoline (e.g., the engine has a drop in power output of more than 80 percent) are not flexible fuel vehicles.

* * * * *

Total Hydrocarbon Equivalent means the sum of the carbon mass emissions of non-oxygenated hydrocarbons, methanol, formaldehyde or other organic compounds that are separately measured, expressed as gasoline-fueled vehicle hydrocarbons. In the case of exhaust emissions, the hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1. In the case of diurnal and hot soak emissions, the hydrogen-to-carbon ratios of the equivalent hydrocarbons are 2.33:1 and 2.2:1, respectively.

* * * * *

4. Section 86.090–3 of Subpart A is amended by removing the entry for OMHCE in paragraph (b) and adding an entry for THCE in alphabetical order to read as follows:

§ 86.090–3 Abbreviations.

* * * * *

(b) * * *

THCE—Total Hydrocarbon Equivalent

* * * * *

5. Section 86.094–2 of Subpart A is amended by adding the definition of ''Non-Methane Hydrocarbon Equivalent'' in alphabetical order to read as follows:

§ 86.094–2 Definitions.

* * * * *

Non-Methane Hydrocarbon Equivalent means the sum of the carbon mass emissions of non-oxygenated non-methane hydrocarbons, methanol, formaldehyde, or other organic compounds that are separately measured, expressed as gasoline-fueled vehicle hydrocarbons. In the case of exhaust emissions, the hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1. In the case of diurnal and hot soak emissions, the hydrogen-to-carbon ratios of the equivalent hydrocarbons are 2.33:1 and 2.2:1, respectively.

* * * * *

6. Section 86.094–3 of Subpart A is amended in paragraph (b) by placing the entries in alphabetical order, removing the entry for OMNMHCE and adding an entry for NMHCE in alphabetical order to read as follows:

§ 86.094–3 Abbreviations.

* * * * *

(b) * * *

* * * * *

NMHCE—Non-Methane Hydrocarbon Equivalent

* * * * *

7. Section 86.094–9 of Subpart A is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 86.094–9 Emission standards for 1994 and later model year light-duty trucks.

(a) * * *

(1) * * *

(iii) Exhaust emissions of carbon monoxide from 1994 and later model year light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle at a useful life of 11 years or 120,000 miles, whichever first occurs (for Otto-cycle and methanol-natural gas- and liquefied petroleum gas-fueled diesel-cycle light-duty trucks only).

* * * * *

8. Section 86.094–21 of Subpart A is amended by adding paragraph (j) to read as follows:

§ 86.094–21 Application for certification.

* * * * *

(j) For methanol-fueled vehicles, the manufacturer shall specify:

(1) Whether the vehicle is a flexible fuel vehicle or a dedicated vehicle (manufacturers must obtain advance approval from the Administrator to classify methanol-fueled vehicles that can use gasoline as dedicated vehicles); and

(2) The fuel(s) (*i.e.*, the percent methanol) for which the vehicle was designed.

9. Section 86.096–21 of Subpart A is amended by redesignating paragraphs (j) and (k) as paragraphs (k) and (l), respectively, removing paragraphs (c) through (i), and adding paragraphs (c) through (j) to read as follows:

§ 86.096–21 Application for certification.

* * * * *

(c) through (j) [Reserved]. For guidance see § 86.094–21.

* * * * *

10. Section 86.097–9 of Subpart A is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 86.097–9 Emission standards for 1997 and later model year light-duty trucks.

(a) * * *

(1) * * *

(iii) Exhaust emissions of carbon monoxide from 1997 and later model year light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle at a useful life of 11 years or 120,000 miles, whichever first occurs (for Otto-cycle and methanol-natural gas- and liquefied petroleum gas-fueled diesel-cycle light-duty trucks only).

* * * * *

11. Section 86.098–21 of Subpart A is amended by removing paragraphs (c) through (k) and adding paragraphs (c) through (l) to read as follows:

§ 86.098–21 Application for certification.

* * * * *

(c) through (j) [Reserved]. For guidance see § 86.094–21.

(k) and (l) [Reserved]. For guidance see § 86.096–21.

12. Section 86.107–90 of Subpart B is amended by revising the introductory text of paragraph (a)(2)(i) and adding paragraph (a)(2)(iii) to read as follows:

§ 86.107–90 Sampling and analytical system; evaporative emissions.

(a) * * *

(2) * * * (i) For gasoline- and methanol-fueled vehicles a hydrocarbon analyzer utilizing the hydrogen flame ionization principle (FID) shall be used to monitor the atmosphere within the enclosure (a heated FID (HFID)(235° ±15°F (113 ±8°C)) is recommended for methanol-fueled vehicles). Instrument bypass flow may be returned to the enclosure. The FID shall have a response time to 90 percent of final reading of less than 1.5 seconds, and be capable of meeting performance requirements expressed as a function of Cstd: where Cstd is the specific enclosure hydrocarbon level, in ppm, corresponding to the evaporative emission standard:

* * * * *

(iii) The methanol sampling system shall be designed such that, if a test vehicle emitted the maximum allowable level of methanol (based on all applicable standards) during any phase of the test, the measured concentration in the primary impinger would exceed either 25 mg/l or a concentration equal to 25 times the limit of detection for the GC analyzer, and such that the primary impinger collects at least 90 percent of the analyte in the samples. The remaining analyte shall be collected by the secondary impinger. This requirement does not apply to dilution air samples, since they do not require secondary impingers, or to samples in which the concentrations approach the limit of detection. The provisions of this paragraph apply to the design of sampling systems, not to individual tests.

* * * * *

13. Section 86.107–96 of Subpart B is amended by revising paragraph (b)(1) and adding paragraph (b)(3) to read as follows:

§ 86.107–96 Sampling and analytical systems; evaporative emissions.

* * * * *

(b) * * *

(1) For gasoline fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled vehicles a hydrocarbon analyzer utilizing the hydrogen flame ionization principle (FID) shall be used to monitor the

atmosphere within the enclosure (a heated FID (HFID)(235° ±15°F (113 ±8°C)) is recommended for methanol-fueled vehicles). For natural gas-fueled vehicles, the FID may be calibrated using methane, or if calibrated using propane the FID response to methane shall be determined and applied to the FID hydrocarbon reading. Provided evaporative emission results are not effected, a probe may be used to detect or verify hydrocarbon sources during a running loss test. Instrument bypass flow may be returned to the enclosure. The FID shall have a response time to 90 percent of final reading of less than 1.5 seconds.

* * * * *

(3) The methanol sampling system shall be designed such that, if a test vehicle emitted the maximum allowable level of methanol (based on all applicable standards) during any phase of the test, the measured concentration in the primary impinger would exceed either 25 mg/l or a concentration equal to 25 times the limit of detection for the GC analyzer, and such that the primary impinger collects at least 90 percent of the analyte in the samples. The remaining analyte shall be collected by the secondary impinger. This requirement does not apply to dilution air samples, since they do not require secondary impingers, or to samples in which the concentrations approach the limit of detection. The provisions of this paragraph apply to the design of sampling systems, not to individual tests.

* * * * *

14. Section 86.109–94 of Subpart B is amended by revising paragraphs (a)(2)(i) through (a)(2)(iv), text of paragraph (a)(3) preceding figures, text of paragraph (a)(4) preceding figure, paragraphs (a)(5), (b) introductory text, (b)(4), (b)(5), (b)(6), (c) introductory text, (c)(4), (c)(5), and (c)(6), and adding paragraphs (a)(6) and (d), and revising Figures B94–2 and B94–3 to read as follows:

§ 86.109–94 Exhaust gas sampling system; Otto-cycle vehicles not requiring particulate emissions measurement.

(a) * * *

(2) * * *

(i) Using a duct of unrestricted length maintained at a temperature above the maximum dew point of the exhaust, but below 250°F (121°C); heating and possibly cooling capabilities are required; or

(ii) Using a short duct (up to 12 feet long) constructed of smooth wall pipe with a minimum of flexible sections, maintained at a temperature above the maximum dew point of the exhaust, but below 250°F (121°C), prior to the test and during the 10 minute hot soak segment and uninsulated during the test (insulation may remain in place and/or heating may occur during testing provided maximum temperature is not exceeded); or

(iii) Using smooth wall duct less than five feet long with no required heating. A maximum of two short flexible connectors are allowed under this option; or

(iv) Omitting the duct and performing the exhaust gas dilution function at the vehicle tailpipe exit.

(3) *Positive displacement pump.* The Positive Displacement Pump-Constant Volume Sampler (PDP-CVS), Figure B94–1 satisfies the first condition by metering at a constant temperature and pressure through the pump. The total volume is measured by counting the revolutions made by the calibrated positive displacement pump. The proportional samples for the bag sample, and for methanol-fueled vehicles, the methanol sample (Figure B94–2) and the formaldehyde sample (Figure B94–3), are achieved by sampling at a constant flow rate. For methanol-fueled vehicles, the sample lines for the methanol and formaldehyde samples are heated to prevent condensation. The temperature of the sample lines shall be more than 5°F (3°C) above the maximum dew point of the sample, but below 250°F (121°C). (Note: For 1990 through 1994 model year methanol-fueled vehicles, methanol and formaldehyde sampling may be omitted provided the bag sample (hydrocarbons and methanol) is analyzed using a HFID calibrated with methanol.)

* * * * *

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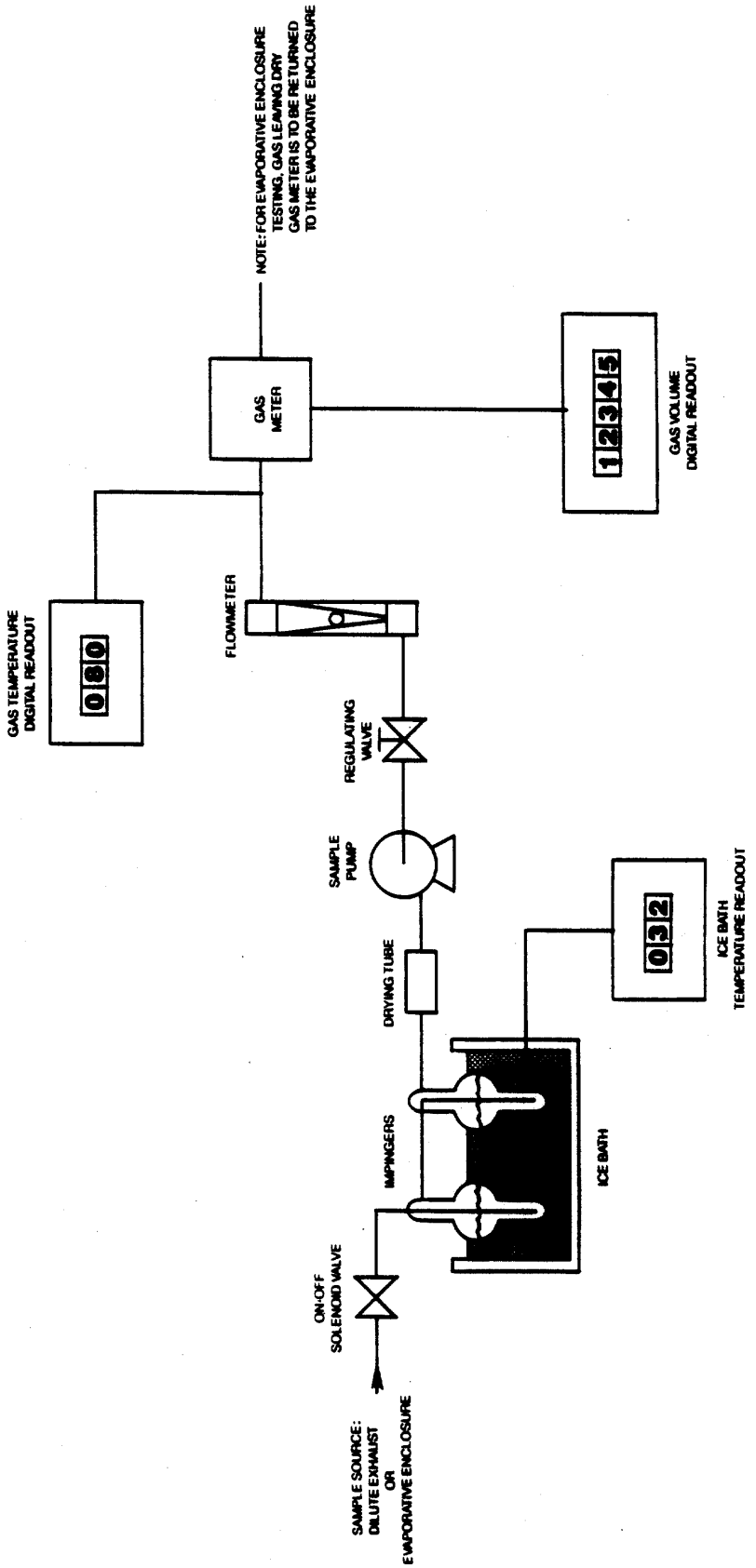

FIGURE B94-2 METHANOL SAMPLE COLLECTION FLOW SCHEMATIC

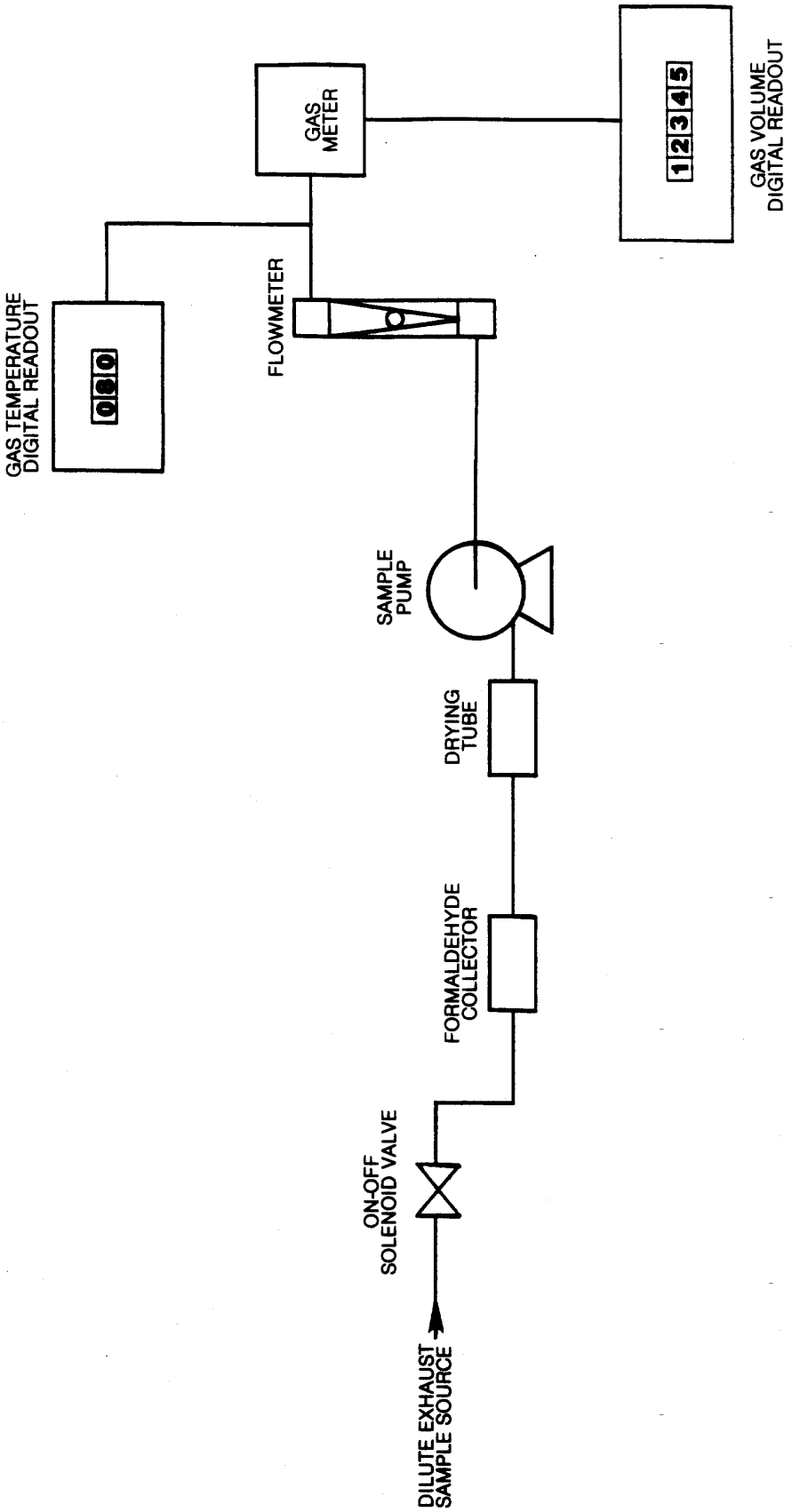

FIGURE B94-3 FORMALDEHYDE SAMPLE COLLECTION FLOW SCHEMATIC

BILLING CODE 6560–50–C

(4) *Critical flow venturi.* The operation of the Critical Flow Venturi-Constant Volume Sampler (CFV–CVS) sample system, Figure B94–4, is based upon the principles of fluid dynamics associated with critical flow. Proportional sampling throughout temperature excursions is maintained by use of small CFVs in the sample lines (for methanol-fueled vehicles, one line supplies sample for the bag sample, another line supplies sample for the methanol sample, and a third line supplies sample for the formaldehyde sample.) The methanol and formaldehyde sample lines are heated to prevent condensation. The temperature of the sample lines shall be more than 5°F (3°C) above the maximum dew point of the sample, but below 250°F (121°C). Care should be taken to ensure that the CFVs of the sample probes are not heated since heating of the CFVs would cause loss of proportionality. The variable mixture flow rate is maintained at sonic velocity, is inversely proportional to the square root of the gas temperature, and is computed continuously. Since the pressure and temperature are the same at all venturi inlets, the sample volume is proportional to the total volume. (Note: For 1990 through 1994 model year methanol-fueled vehicles, methanol and formaldehyde sampling may be omitted provided the bag sample (hydrocarbons and methanol) is analyzed using a HFID calibrated with methanol.)

* * * * *

(5) *Electronic flow control.* The Critical Flow Venturi-Electronic Flow Control-Constant Volume Sampler (CFV–EFC–CVS) system is identical to the CFV–CVS system described in paragraphs (a)(4) and (c) of this section, except that it maintains proportional sampling for methanol and formaldehyde by measuring the CVS flow rate, and electronically controlling sample flow rates. For methanol-fueled vehicles, the samples lines for the methanol and formaldehyde samples are heated to prevent condensation. The temperature of the sample lines shall be more than 5°F (3°C) above the maximum dew point of the sample, but below 250°F (121°C).

(6) *Other systems.* Other sampling systems may be used if shown to yield equivalent or superior results, and if approved in advance by the Administrator.

(b) *Component description, PDP–CVS.* The PDP–CVS, Figure B94–1, consists of a dilution air filter and mixing assembly, heat exchanger, positive displacement pump, sampling systems (see Figure B94–2 for methanol sampling system and Figure B94–3 for formaldehyde sampling system) sampling lines which are heated to a temperature that is more than 5°F (3°C) above the maximum dew point of the sample, but below 250°F (121°C) in the case of the methanol-fueled vehicles (heating of the sample lines may be omitted, provided the methanol and formaldehyde sample collection systems are close coupled to the probes thereby preventing loss of sample due to cooling and resulting condensation in the sample lines), and associated valves, pressure and temperature sensors. The PDP–CVS shall conform to the following requirements:

* * * * *

(4) The flow capacity of the CVS shall be large enough to completely eliminate water condensation in the dilution and sampling systems. (300 to 350 cfm (0.142 to 0.165 m^3/s) is sufficient for most petroleum-fueled vehicles. Higher flow rates are required for methanol-fueled vehicles and may be required for natural gas-fueled and liquefied petroleum gas-fueled vehicles. Procedures for determining CVS flow rates are detailed in ''Calculation of Emissions and Fuel Economy When Using Alternative Fuels,'' EPA 460/3–83–009.) (Copies may be obtained from U.S. Department of Commerce, NTIS, Springfield, Virginia 22161; order ± PB 84104702.) Dehumidifying the dilution air before entering the CVS is allowed. Hearing the dilution air is also allowed, provided:

(i) The air (or air plus exhaust gas) temperature does not exceed 250 °F.

(ii) Calculation of the CVS flow rate necessary to prevent water condensation is based on the lowest temperature encountered in the CVS prior to sampling. (It is recommended that the CVS system be insulated when heated dilution air is used.)

(iii) The dilution ratio is sufficiently high to prevent condensation in bag samples as they cool to room temperature.

(5) Sample collection bags for dilution air and exhaust samples shall be of sufficient size so as not to impede sample flow. A single dilution air sample, covering the total test period, may be collected for the determination of methanol and formaldehyde background (methanol-fueled vehicles).

(6) The methanol sample collection system and the formaldehyde sample collection system shall each be of sufficient capacity so as to collect samples of adequate size for analysis without significant impact on the volume of dilute exhaust passing through the PDP. The systems shall also comply with the following requirements that apply to the design of the systems, not to individual tests.

(i) The methanol system shall be designed such that, if a test vehicle emitted the maximum allowable level of methanol (based on all applicable standards) during the first phase of the test, the measured concentration in the primary impinger would exceed either 25 mg/l or a concentration equal to 25 times the limit of detection for the GC analyzer. Sampling systems for all phases shall be identical.

(ii) The formaldehyde system shall be designed such that, if a test vehicle emitted formaldehyde at a rate equal to twenty percent of the maximum allowable level of NMHCE (i.e., 0.05 g/mi for a 0.25 g/mi NMHCE standard), or the maximum formaldehyde level allowed by a specific formaldehyde standard, whichever is less, during the first phase of the test, the concentration of formaldehyde in the DNPH solution of the primary impinger, or solution resulting from the extraction of the DNPH cartridge, shall exceed either 2.5 mg/l or a concentration equal to 25 times the limit of detection for the HPLC analyzer. Sampling systems for all phases shall be identical.

(iii) The methanol and formaldehyde impinger systems shall be designed such that the primary impinger collects at least 90 percent of the analyte in the samples. The remaining analyte shall be collected by the secondary impinger. This requirement does not apply to dilution air samples, since they do not require secondary impingers, or to samples in which the concentrations approach the limit of detection.

(c) *Component description, CFV–CVS.* The CFV–CVS sample system, Figure B94–4, consists of a dilution air filter and mixing assembly, a cyclone particulate separator, unheated sampling venturies for the bag samples, and for the methanol and formaldehyde samples from methanol-fueled vehicles, samples lines heated to a temperature that is more than 5°F (3°C) above the maximum dew point of the sample, but below 250°F (121°C) for the methanol and formaldehyde samples from methanol fueled vehicles (heating of the sample lines may be omitted provided, the methanol and formaldehyde sample collection systems are close coupled to the probes thereby preventing loss of sample due to cooling and resulting condensation in the sample lines), a critical flow venturi, and assorted valves, and pressure and temperature sensors. The CFV sample system shall conform to the following requirements:

* * * * *

(4) The flow capacity of the CVS shall be large enough to completely eliminate water condensation in the dilution and sampling systems. (300 to 350 cfm (0.142 to 0.165 m^3/s) is sufficient for most petroleum-fueled vehicles. Higher flow rates are required for methanol-fueled vehicles and may be required for natural gas-fueled and liquefied petroleum gas-fueled vehicles. Procedures for determining CVS flow rates are detailed in ''Calculation of Emissions and Fuel Economy When Using Alternative Fuels,'' EPA 460/3–83–009.) Dehumidifying the dilution air before entering the CVS is allowed. Heating the dilution air is also allowed, provided:

(i) The air (or air plus exhaust gas) temperature does not exceed 250°F (121°C).

(ii) Calculation of the CVS flow rate necessary to prevent water condensation is based on the lowest temperature encountered in the CVS prior to sampling. (It is recommended that the CVS system be insulated when heated dilution air is used.)

(iii) The dilution ratio is sufficiently high to prevent condensation in bag samples as they cool to room temperature.

(5) Sample collection bags for dilution air and exhaust samples shall be of sufficient size so as not to impede sample flow. A single dilution air sample, covering the total test period, may be collected for the determination of methanol and formaldehyde background (methanol-fueled vehicles).

(6) The methanol sample collection system and the formaldehyde sample collection system shall each be of sufficient capacity so as to collect samples of adequate size for analysis without significant impact on the volume of dilute exhaust passing through the CVS. The systems shall also comply with the following requirements that apply to the design of the systems, not to individual tests.

(i) The methanol system shall be designed such that, if a test vehicle emitted the maximum allowable level of methanol (based on all applicable standards) during the first phase of the test, the measured concentration in the primary impinger would exceed either 25 mg/l or a concentration equal to 25 times the limit of detection for the GC analyzer. Sampling systems for all phases shall be identical.

(ii) The formaldehyde system shall be designed such that, if a test vehicle emitted formaldehyde at a rate equal to twenty percent of the maximum allowable level of NMHCE (i.e., 0.05 g/mi for a 0.25 g/mi NMHCE standard), or the maximum formaldehyde level allowed by a specific formaldehyde standard, whichever is less, during the first phase of the test, the concentration of formaldehyde in the DNPH solution of the primary impinger, or solution resulting from the extraction of the DNPH cartridge, shall exceed either 2.5 mg/l or a concentration equal to 25 times the limit of detection for the HPLC analyzer. Sampling systems for all phases shall be identical.

(iii) The methanol and formaldehyde systems shall be designed such that the primary impinger collects at least 90 percent of the analyte in the samples. The remaining analyte shall be collected by the secondary impinger. This requirement does not apply to dilution air samples, since they do not require secondary impingers, or to samples in which the concentrations approach the limit of detection.

(d) *Component description, CFV–EFC–CVS.* The CVS sample system is identical to the system described in paragraph (c) of this section, plus includes a means of electronically measuring the CVS flow rate, and electronic mass flow controllers for the methanol and formaldehyde sample lines. The EFC sample system shall conform to all of the requirements listed in paragraph (c), except that the methanol and formaldehyde samples must both be drawn from a static probe. It also must comply with the following additional requirements:

(1) The ratio of the CVS mass flow rate to the sample mass flow rate shall not deviate from the design ratio by more than ±5 percent. (The volumetric sample flow rate shall be varied inversely with the square root of the bulk stream temperature.)

(2) Flow meters to totalize sample volumes for methanol and/or formaldehyde samples shall meet the accuracy specifications of § 86.120. Total sample volumes may be obtained from the flow controllers, provided that the controllers meet the accuracy specifications of § 86.120.

15. Section 86.110–94 of Subpart B is amended by revising the text of paragraph (a)(1) preceding the figures, paragraphs (a)(5)(i) through (a)(5)(iii), (b) introductory text, (b)(1), (b)(2), (c), and (d), to read as follows:

§ 86.110–94 Exhaust gas sampling system; diesel-cycle vehicles, and Otto-cycle vehicles requiring particulate emissions measurements.

* * * * *

(a) * * *

(1) This sampling system requires the use of a PDP–CVS, CFV–CVS (or a CFV–EFC–CVS), sample system with heat exchanger connected to a dilution tunnel. The heat exchanger is not required for the CFV–CVS or EFC–CFV–CVS if electronic flow controllers are used to maintain proportionality for the particulate sample. Figure B94–5 is a schematic drawing of the PDP system. Figure B94–6 is a schematic drawing of the CFV–CVS system. (Methanol-fueled Otto-cycle vehicles may be tested using this test equipment, without measuring particulate emissions.)

* * * * *

(5) * * *

(i) A tailpipe to dilution tunnel duct of unrestricted length maintained at a temperature above the dew point of the mixture, but below 250°F (121°C) through heating and cooling as required; or

(ii) Using a short duct (up to 12 feet long) constructed of smooth wall pipe with a minimum of flexible sections maintained at a temperature above the dew point of the mixture, but below 250°F (121°C) prior to the test and during breaks in testing (insulation may remain in place and or heating may occur during the testing provided the maximum temperature is not exceeded); or

(iii) Using smooth wall duct less than five feet long with no required heating. A maximum of two short flexible connectors are allowed under this option; or

* * * * *

(b) *Component description—petroleum-fueled, natural gas-fueled and liquefied petroleum gas-fueled vehicles.* The components necessary for petroleum-fueled, natural gas-fueled and liquefied petroleum gas-fueled vehicle exhaust sampling shall meet the following requirements:

(1) The PDP–CVS, Figure B94–5, shall contain a proportional particulate sampling system, and shall conform to all of the requirements listed for the exhaust gas PDP–CVS (§ 86.109(b)), with one exception: a flow rate of sufficient volume is required to maintain the diluted exhaust stream, from which the particulate sample flow is taken, at a temperature of 125°F (52°C) or less.

(2) The CFV sample system, Figure B94–6, shall contain a proportional particulate sampling system, and shall conform to all of the requirements listed for the exhaust gas CFV sample system (§ 86.109(c)), except for the following:

(i) A flow rate of sufficient volume is required to maintain the diluted exhaust stream, from which the particulate sample flow is taken, at a temperature of 125°F (52°C) or less.

(ii) If a constant volume particulate sample is collected, a heat exchanger is required.

(iii) If a heat exchanger is used, the gas mixture temperature, measured at a point immediately ahead of the critical flow venturi, shall be within ± 20°F (11°C) of the designed operating temperature at the start of the test. The gas mixture temperature variation from its value at the start of the test shall be limited to ± 20°F (11°C) during the entire test. The temperature measuring system shall have an accuracy and precision of ± 2°F (1.1°C).

(iv) The cyclonic separator is optional.

* * * * *

(c) *Component description—methanol-fueled vehicles.* The components necessary for methanol-fueled vehicle exhaust sampling shall meet the following requirements:

(1) The PDP–CVS, Figure B94–5, shall contain a proportional particulate sampling system, and shall conform to all of the requirements listed for the exhaust gas PDP–CVS (§ 86.109), with one exception: a flow rate of sufficient volume is required to maintain the diluted exhaust stream, from which the particulate sample flow is taken, at a temperature of 125°F (52°C) or less.

(2) The CFV–CVS sample system, Figure B94–6, shall contain a proportional particulate sampling system, and shall conform to all of the requirements listed for the exhaust gas CFV sample system (§ 86.109), except for the following:

(i) A flow rate of sufficient volume is required to maintain the diluted exhaust stream, from which the particulate sample flow is taken, at a temperature of 125°F (52°C) or less.

(ii) If a constant volume particulate sample is collected, a heat exchanger is required.

(iii) If a heat exchanger is used, the gas mixture temperature, measured at a point immediately ahead of the critical flow venturi, shall be within ± 20°F (11°C) of the designed operating temperature at the start of the test. The gas mixture temperature variation from its value at the start of the test shall be limited to ± 20°F (11°C) during the entire test. The temperature measuring system shall have an accuracy and precision of ± 2°F (1.1°C).

(iv) The cyclonic separator is optional.

(3) The EFC–CFV–CVS sample system shall conform to all of the requirements listed for the exhaust gas EFC sample system (§ 86.109) with three exceptions:

(i) A flow rate of sufficient volume is required to maintain the diluted exhaust stream, from which the particulate sample flow is taken, at a temperature of 125°F (52°C) or less.

(ii) A proportional particulate sample shall be collected using an electronic flow controller that meets the performance criteria listed in § 86.109 for methanol and formaldehyde EFC systems.

(iii) The cyclonic separator is optional.

(4) Losses of methanol due to condensation of water in the duct connecting the vehicle tail pipe to the dilution tunnel must be eliminated. This may be accomplished by:

(i) The use of a duct of unrestricted length maintained at a temperature above the maximum dew point of the exhaust, but below 250°F (121°C), through heating and cooling as required; or

(ii) The use of a short duct (up to 12 feet long) constructed of smooth wall pipe with a minimum of flexible sections maintained at a temperature above the maximum dew point of the exhaust, but below 250°F (121°C), prior to the test and during breaks in testing (insulation may remain in place and/or heating may occur during testing provided maximum temperature is not exceeded); or

(iii) Using smooth wall duct less than five feet long with no required heating. A maximum of two short flexible connectors are allowed under this option; or

(iv) Omitting the duct and performing the exhaust gas dilution function at the vehicle tailpipe exit.

(5) The vehicle exhaust shall be directed downstream at the point where it is introduced into the dilution tunnel.

(6) The dilution air shall be between 68°F (20°C) and 86°F (30°C) during the test (unless the requirements of § 86.109–94(b)(4) are also met).

(7) The dilution tunnel shall be:

(i) Sized to permit development of turbulent flow (Reynold's No. >>4000) and complete mixing of the exhaust and dilution air between the mixing orifice and the particulate sample probe. It is recommended that uniform mixing be demonstrated by the user.

(ii) At least 8.0 inches (20.3 cm) in diameter.

(iii) Constructed of electrically conductive material which does not react with the exhaust components.

(iv) Grounded.

(8) The temperature of the diluted exhaust stream inside of the dilution tunnel shall be sufficient to prevent water condensation. However, the sample zone dilute exhaust temperature shall not exceed 125°F (52°C) at any time during the test.

(9) The particulate sample probe shall be:

(i) Installed facing upstream at a point where the dilution air and exhaust are well mixed (i.e., near the tunnel centerline, approximately 10 tunnel diameters downstream from the point where the exhaust enters the dilution tunnel).

(ii) Sufficiently distant (radially) from the THC probe so as to be free from the influence of any wakes or eddies produced by the THC probe.

(iii) 0.5 inch (1.27 cm) minimum inside diameter.

(iv) The distance from the sampling tip to the filter holder shall be at least five probe diameters (for filters located inside the tunnel), but not more than 40.0 inches (102 cm) for filters located outside of the dilution tunnel.

(v) Free from sharp bends.

(vi) Configured so that a clean particulate filter (including back up filter) can be selected simultaneously with the selection of an empty gaseous emissions bag.

(10) The flow rate through the particulate probe shall be maintained to a constant value within ±5 percent of the set flow rate.

(11) The particulate sample pump shall be located sufficiently distant from the dilution tunnel so that the inlet gas temperature is maintained at a constant temperature (± 5.0°F (2.8°C)).

(12) The gas meters or flow instrumentation shall be located sufficiently distant from the tunnel so that the inlet gas temperature remains constant (± 5.0°F (2.8°C)).

(13) The hydrocarbon probe shall be:

(i) Installed facing upstream at a point where the dilution air and exhaust are well mixed (i.e., approximately ten tunnel diameters downstream from the point where the exhaust enters the dilution tunnel).

(ii) Sufficiently distant (radially) from the particulate probe so as to be free from the influence of any wakes of eddies produced by the particulate probe.

(iii) Heated and insulated over the entire length to maintain a wall temperature more than 5°F (3°C) above the maximum dew point of the sample, but below 250°F (121°C).

(iv) 0.19 in. (0.48 cm) minimum inside diameter.

(14) It is intended that the THC probe be free from cold spots (i.e., free from cold spots where the probe wall temperature is less than 5°F (3°C) above the maximum dew point of the sample.) This will be determined by a temperature sensor located on a section of the probe wall outside of the dilution tunnel. The temperature sensor shall be insulated from any heating elements on the probe. The sensor shall have an accuracy and precision of ± 2°F (1.1°C).

(15) The dilute exhaust gas flowing in the hydrocarbon sample system shall be:

(i) At 235°F ± 15°F (113°C ± 8°C) immediately before the heated filter. This will be determined by a temperature sensor located immediately upstream of the filter. The sensor shall have an accuracy and precision of ± 2°F (1.1°C).

(ii) At 235° ± 15°F (113°C ± 8°C) immediately before the HFID. This will be determined by a temperature sensor located at the exit of the heated sample line. The sensor shall have an accuracy and precision of ± 2°F (1.1°C).

(16) It is intended that the dilute exhaust gas flowing in the hydrocarbon sample system between 220°F and 250°F (105°C and 121°C).

(17) For methanol-fueled vehicles, bag sampling procedures for the measurement of hydrocarbons as described in § 86.109 may be employed.

(d) [Reserved]. For guidance see § 86.110–90.

16. Section 86.113–94 of Subpart B is amended by revising paragraph (d) to read as follows:

§ 86.113–94 Fuel specifications.

* * * * *

(d) *Mixtures of petroleum and methanol fuels for flexible fuel vehicles.* (1) Mixtures of petroleum and methanol fuels used for exhaust and evaporative emission testing and service accumulation for flexible fuel vehicles shall consist of the appropriate petroleum fuels listed in either paragraph (a) or paragraph (b) of this section and a methanol fuel representative of the fuel expected to be found in use, as specified in paragraph (c) of this section, and shall be within the range of fuel mixtures for which the vehicle was designed, as reported in § 86.94–21(j). The Administrator may use any fuel or fuel mixture within this range for testing.

(2) The fuel mixtures used by the manufacturers shall be sufficient to demonstrate compliance over the full design range, and shall include:

(i) For emission testing:

(A) The petroleum fuel specified in paragraph (a) or (b) of this section;

(B) A methanol fuel representative of the methanol fuel expected to the found in use, as specified in paragraph (c) of this section;

(C) A combination of the fuels specified in paragraphs (d)(2)(i)(A) and (d)(2)(i)(B) of this section at a composition which represents the highest Reid Vapor Pressure of in-use mixtures. This mixture shall contain between 9–13 percent methanol by volume.

(ii) For service accumulation, the fuels specified in paragraphs (a) and (c) of this section or, for diesel FFVs, paragraphs (b) and (c) of this section shall be used alternately. The fuels shall be alternated at mileage intervals not to exceed 5,000 miles. The fuels shall be alternated such that the cumulative volumes of both the methanol fuel and the petroleum fuel used shall be at least 25 percent of the total fuel volume.

(iii) Or, other combinations for testing or service accumulation which demonstrate compliance with the standards over the entire design range of the vehicle, provided that written approval is obtained from the Administrator prior to the start of testing.

(3) The specification range of the fuels to be used under this paragraph (d) shall be reported in accordance with § 86.094–21.

* * * * *

17. Section 86.114–94 of Subpart B is amended by revising paragraphs (a)(2), (a)(5), (b), and (c), and adding paragraph (d) to read as follows:

§ 86.114–94 Analytical gases.

(a) * * *

(2) Gases for the THC analyzer shall be:

(i) Single blends of propane using air as the diluent; and

(ii) Optionally, for response factor determination, single blends of methanol using air as the diluent.

* * * * *

(5) Fuel for FIDs and HFIDs and the methane analyzer shall be a blend of 40 ±2 percent hydrogen with the balance being helium. The mixture shall contain less than one ppm equivalent carbon response. 98 to 100 percent hydrogen fuel may be used with advance approval by the Administrator.

* * * * *

(b) Calibration gases (not including methanol) shall be traceable to within one percent of NIST (formerly NBS) gas standards, or other gas standards which have been approved by the Administrator.

(c) Span gases (not including methanol) shall be accurate to within two percent of true concentration, where true concentration refers to NIST (formerly NBS) gas standards, or other gas standards which have been approved by the Administrator.

(d) Methanol in air gases used for response factor determination shall:

(1) Be traceable to within ±2 percent of NIST (formerly NBS) gas standards, or other standards which have been approved by the Administrator; and

(2) Remain within ±2 percent of the labeled concentration. Demonstration of stability shall be based on a quarterly measurement procedure with a precision of ±2 percent (two standard deviations), or other method approved by the Administrator. The measurement procedure may incorporate multiple measurements. If the true concentration of the gas changes by more than two percent, but less than ten percent, the gas may be relabeled with the new concentration.

18. Section 86.116–94 of Subpart B is amended by revising paragraphs (c)(1) and (c)(3), and adding paragraph (g) to read as follows:

§ 86.116–94 Calibrations, frequency and overview.

* * * * *

(c) * * *

(1) Calibrate the THC analyzers (both evaporative and exhaust instruments), methane analyzer, carbon dioxide analyzer, carbon monoxide analyzer, and oxides of nitrogen analyzer (certain analyzers may require more frequent calibration depending on particular equipment and uses).

* * * * *

(3) Perform an organic gas retention and calibration on the evaporative emissions enclosure (see § 86.117–90(c)).

* * * * *

(g) The Administrator, upon request, may waive the requirement to comply with the specified methanol recovery tolerance (e.g., ±2 percent in §§ 86.117–90 and 86.119–90), and/or the specified methanol retention tolerance (e.g., ±4 percent in § 86.117–90), and instead require compliance with higher tolerances (not to exceed ±6 percent for recoveries and ±8 for retention), provided that:

(1) The Administrator determines that compliance with these specified tolerances is not practically feasible; and

(2) The manufacturer makes information available to the Administrator which indicates that the calibration tests and their results are consistent with good laboratory practice, and that the results are consistent with the results of calibration testing conducted by the Administrator.

19. Section 86.117–90 of Subpart B is amended by revising paragraphs (c) heading and introductory text, (c)(5), (c)(7), (c)(9), (d)(1), and (d)(2)(iii) to read as follows:

§ 86.117–90 Evaporative emission enclosure calibrations.

* * * * *

(c) *Hydrocarbon and methanol (organic gas) retention check and calibration.* The hydrocarbon and methanol (if the enclosure is used for

methanol-fueled vehicles) retention check provides a check upon the calculated volume and also measures the leak rate. Prior to its introduction into service and at least monthly thereafter (the methanol check can be performed less frequently, provided it is performed at least twice annually) the enclosure leak rate shall be determined as follows:

* * * * *

(5) Inject into the enclosure a known quantity of pure propane (4g is a convenient quantity) and a known quantity of pure methanol (4g is a convenient quantity) in gaseous form; i.e., at a temperature of at least 150–155 °F (65–68 °C). The propane and methanol may be measured by volume flow or by mass measurement. The method used to measure the propane and methanol shall have an accuracy of ±0.5 percent of the measured value (less accurate methods may be used with the advanced approval of the Administrator). The methanol and propane tests do not need to be conducted simultaneously.

* * * * *

(7) To verify the enclosure calibration, calculate the mass of propane and the mass of methanol using the measurements taken in steps (4) and (6) (see paragraph (d) of this section). This quantity must be within ±2 percent of that measured in step 5 above. (For 1991–1995 calendar years, the difference may exceed ±2 percent for methanol, provided it does not exceed ±8 percent for 1991 testing and ±6 percent for 1992–1995 testing.)

* * * * *

(9) Calculate, using the equations in paragraph (d) of this section and the readings taken in step (8), the hydrocarbon and methanol mass. It may not differ by more than ±4 percent of the value in step (6). (For 1991–1995 calendar years, the difference may exceed ±4 percent for methanol, provided it does not exceed ±8 percent for 1991 testing and ±6 percent for 1992–1995 testing.)

(d) *Calculations.* (1) The calculation of net methanol and hydrocarbon mass change is used to determine enclosure background and leak rate. It is also used to check the enclosure volume measurements. The methanol mass change is calculated from the initial and final methanol samples, temperature and pressure according to the following equation:

$$M_{CH3OH} = V_X \times \frac{T_{Ef}}{V_{Ef} \times T_{SHEDf}} \left(C_{MX1i} \times AV_{1f}\right) + \left(C_{MS2f} \times AV_{2f}\right) - \frac{T_{Ei}}{V_{Ei} \times T_{SHEDi}} \left(C_{MS1i} \times AV_{1i}\right) + \left(C_{MS1i} \times AV_{2i}\right)$$

Where:

(i) M_{CH3OH}=Methanol mass change, µg.
(ii) V=Enclosure volume, ft^3, as measured in paragraph (b)(1) of this section.
(iii) TE=Temperature of sample withdrawn, °R.
(iv) T_{SHED}=Temperature of SHED, °R.
(v) VE=Volume of sample withdrawn, ft^3.
(vi) P_B=Barometric pressure at time of sampling, in. Hg.
(vii) C_{MS}=GC concentration of test sample.
(viii) AV=Volume of absorbing reagent in impinger (ml).
(ix) i=Initial sample.
(x) f=Final sample.
(xi) 1=First impinger.
(xii) 2=Second impinger.

(2) * * *

(iii) C_{CH3OH}=Methanol concentration as ppm carbon

$$= \frac{1.501 \times 10^{-3} \times T_E}{P_B \times V_E} \left[\left(C_{S1} \times AV_1\right) + \left(C_2 \times AV_2\right)\right]$$

* * * * *

20. Section 86.117–96 of Subpart B is amended by revising paragraphs (c) heading and introductory text, (c)(1)(vii), (c)(1)(ix), (c)(1)(xii), (d)(1), and (d)(2)(iii) to read as follows:

§ 86.117–96 Evaporative emission enclosure calibrations.

* * * * *

(c) *Hydrocarbon and methanol (organic) retention check and calibration.* The hydrocarbon and methanol (if the enclosure is used for methanol-fueled vehicles) retention check provides a check upon the calculated volume and also measures the leak rate. The enclosure leak rate shall be determined prior to its introduction into service, following any modifications or repairs to the enclosure that may affect the integrity of the enclosure, and at least monthly thereafter. (The methanol check can be performed less frequently, provided it is performed at least twice annually.) If six consecutive monthly retention checks are successfully completed without corrective action, the enclosure leak rate may be determined quarterly thereafter as long as no corrective action is required.

(1) * * *

(vii) Inject into the enclosure 2 to 6 grams of pure propane and 2 to 6 grams of pure methanol in gaseous form; i.e., at a temperature of at least 150 °F (65°C). The propane and methanol may be measured by volume flow or by mass measurement. The method used to measure the propane and methanol shall have an accuracy of ±0.2 percent of the measured value (less accurate methods may be used with the advanced approval of the Administrator). The methanol and propane tests do not need to be conducted simultaneously.

* * * * *

(ix) To verify the enclosure calibration, calculate the mass of propane and the mass of methanol using the measurements taken in paragraphs (c)(1)(vi) and (viii) of this section. See paragraph (d) of this section. This quantity must be within ±2 percent of that measured in paragraph (c)(1)(vii) of this section. (For 1991–1995 calendar years, the difference may exceed ±2 percent for methanol, provided it does not exceed ±6 percent.)

* * * * *

(xii) At the completion of the 24-hour cycling period, analyze the enclosure atmosphere for hydrocarbon and

methanol content; determine the net withdrawn methanol (in the case of diurnal emission testing with fixed volume enclosures); record temperature and barometric pressure. These are the final readings for the hydrocarbon and methanol retention check. The final hydrocarbon and methanol mass, calculated in paragraph (d) of this section, shall be within three percent of that determined in paragraph (c)(1)(viii) of this section. (For 1991–1995 calendar years, the difference may exceed ±3 percent for methanol, provided it does not exceed ±6 percent.)

* * * * *

(d) *Calculations.* (1) The calculation of net methanol and hydrocarbon mass change is used to determine enclosure background and leak rate. It is also used to check the enclosure volume measurements. The methanol mass change is calculated from the initial and final methanol samples, temperature and pressure according to the following equation:

$$M_{CH3OH} = V_X \times \frac{T_{Ef}}{V_{Ef} \times T_{SHEDf}} \left(C_{MS1i} \times AV_{1f}\right) + \left(C_{MS2f} \times AV_{2f}\right)$$

$$- \frac{T_{Ei}}{V_{Ei} \times T_{SHEDi}} \left(C_{MS1i} \times AV_{1i}\right) + \left(C_{MS2i} \times AV_{2i}\right)$$

Where:

(i) M_{CH3OH}=Methanol mass change, µg.

(ii) V=Enclosure volume, ft^3, as measured in paragraph (b)(1) of this section.

(iii) T_E=Temperature of sample withdrawn, °R.

(iv) T_{SHED}=Temperature of SHED, °R.

(v) V_E=Volume of sample withdrawn, ft^3.

(vi) P_B=Barometric pressure at time of sampling, in. Hg.

(vii) C_{MS}=GC concentration of test sample.

(viii) AV=Volume of absorbing reagent in impinger (ml).

(ix) i=Initial sample.

(x) f=Final sample.

(xii) 1=First impinger.

(xiii) 2=Second impinger.

(xiv) $M_{CH3OH,out}$=mass of methanol exiting the enclosure, in the case of fixed volume enclosures for diurnal emission testing, µg.

(xv) $M_{CH3OH,in}$=mass of methanol exiting the enclosure, in the case of fixed volume enclosures for diurnal emission testing, µg.

(2) * * *

(iii) C_{CH3OH}=Methanol concentration as ppm carbon

$$= \frac{1.501 \times 10^{-3} \times T_E}{P_B \times V_E} \left[\left(C_{S1} \times AV_1\right) + \left(C_2 \times AV_2\right)\right]$$

* * * * *

21. Section 86.119–90 of Subpart B is amended by revising paragraphs (c)(1), (c)(4), and (c)(7) to read as follows:

§ 86.119–90 CVS calibration.

* * * * *

(c) * * *

(1) Obtain a small cylinder that has been charged with pure propane or carbon monoxide gas (CAUTION—carbon monoxide is poisonous).

* * * * *

(4) Following completion of step (3) in this paragraph (c) (if methanol injection is required), continue to operate the CVS in the normal manner and release a known quantity of pure methanol (in gaseous form) into the system during the sampling period (approximately five minutes). This step does not need to be performed with each verification, provided that it is performed at least twice annually.

* * * * *

(7) The cause for any discrepancy greater than ±2 percent must be found and corrected. (For 1991–1995 calendar years, discrepancies greater than ±2 percent are allowed for the methanol test, provided that they do not exceed ±8 percent for 1991 testing or ±6 percent for 1992–1995 testing.)

22. A new § 86.120–94 is being added to Subpart B to read as follows:

§ 86.120–94 Gas meter or flow instrumentation calibration; particulate, methanol and formaldehyde measurement.

(a) Sampling for particulate, methanol and formaldehyde emissions requires the use of gas meters or flow instrumentation to determine flow through the particulate filters, methanol impingers and formaldehyde impingers. These instruments shall receive initial and periodic calibrations as follows:

(1)(i) Install a calibration device in series with the instrument. A critical flow orifice, a bellmouth nozzle, a laminar flow element or an NBS traceable flow calibration device is required as the standard device.

(ii) The flow system should be checked for leaks between the calibration and sampling meters, including any pumps that may be part of the system, using good engineering practice.

(2) Flow air through the calibration system at the sample flow rate used for particulate, methanol, and formaldehyde testing and at the backpressure which occurs during the test.

(3) When the temperature and pressure in the system have stabilized, measure the indicated gas volume over a time period of at least five minutes or until a gas volume of at least ±1 percent accuracy can be determined by the standard device. Record the stabilized air temperature and pressure upstream of the instrument and as required for the standard device.

(4) Calculate air flow at standard conditions as measured by both the standard device and the instrument(s). (Standard conditions are defined as 68°F (20°C) and 29.92 in Hg (101.3 kPa).)

(5) Repeat the procedures of paragraphs (a)(2) through (4) of this section using at least two flow rates which bracket the typical operating range.

(6) If the air flow at standard conditions measured by the instrument differs by ±1.0 percent of the maximum operating range or ±2.0 percent of the point (whichever is smaller), then a correction shall be made by either of the following two methods:

(i) Mechanically adjust the instrument so that it agrees with the calibration measurement at the specified flow rates using the criteria of paragraph (a)(6) of this section; or

(ii) Develop a continuous best fit calibration curve for the instrument (as a function of the calibration device flow measurement) from the calibration points to determine corrected flow. The points on the calibration curve relative to the calibration device measurements must be within ±1.0 percent of the maximum operating range of ±2.0 percent of the point (whichever is smaller).

(b) Other systems. A bell prover may be used to calibrate the instrument if the procedure outlined in ANSI B109.1–1973 is used. Prior approval by the Administrator is not required to use the bell prover.

23. Section 86.121–90 of Subpart B is amended by revising paragraphs (c) introductory text, (c)(1), and (c)(3)(iii) to read as follows:

§ 86.121–90 Hydrocarbon analyzer calibration.

* * * * *

(c) *FID response factor to methanol.* When the FID analyzer is to be used for the analysis of hydrocarbon samples containing methanol, the methanol response factor of the analyzer shall be established. The methanol response factor shall be determined at several concentrations in the range of concentrations in the exhaust sample, using either bag samples or gas bottles meeting the requirements of § 86.114.

(1) The bag sample of methanol for analysis in the FID, if used, shall be prepared using the apparatus shown in Figure B90–11. A known volume of methanol is injected, using a microliter syringe, into the heated mixing zone (250°F (121°C)) of the apparatus. The methanol is vaporized and swept into the sample bag with a known volume of zero grade air measured by a gas flow meter meeting the performance requirements of § 86.120.

BILLING CODE 6560–50–P

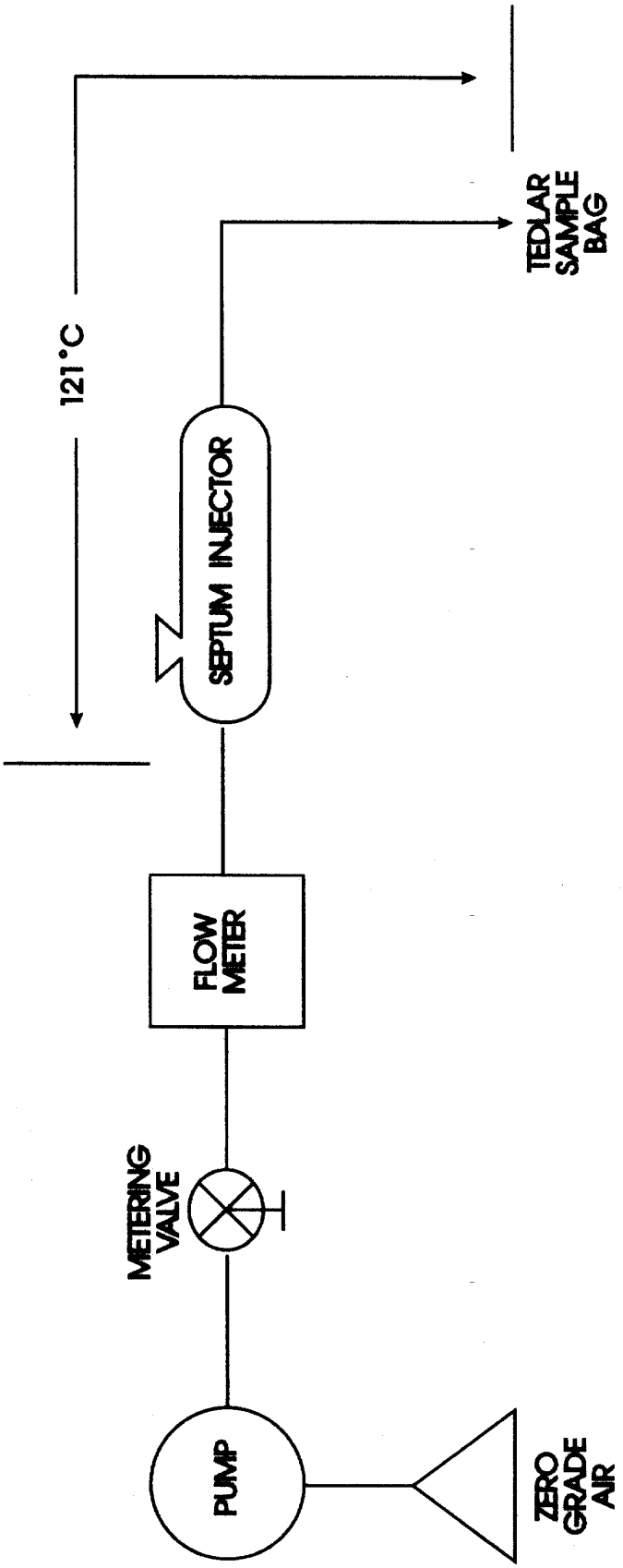

FIGURE B90-11 APPARATUS FOR PREPARATION OF FID METHANOL RESPONSE CALIBRATION MIX

BILLING CODE 6560–50–C

* * * * *

(3) * * *

(iii) SAMppm=methanol concentration in the sample bag, or gas bottle, in ppmC. SAMppm for sample bags

$$= \frac{0.02406 \times \text{Fuel injected} \times \text{Fuel density}}{\text{Air volume} \times \text{Mol. Wt. } CH_3OH}$$

Where:

* * * * *

24. Section 86.123–78 of Subpart B is amended by adding paragraph (c) to read as follows:

§ 86.123–78 Oxides of nitrogen analyzer calibration.

* * * * *

(c) When testing methanol-fueled vehicles, it may be necessary to clean the analyzer frequently to prevent interference with NO_X measurements (see EPA/600/S3–88/040).

25. Section 86.127–94 of Subpart B is amended by adding paragraph (f) to read as follows:

§ 86.127–94 Test procedures; overview.

* * * * *

(f) Background concentrations are measured for all species for which emissions measurements are made. For exhaust testing, this requires sampling and analysis of the dilution air. For evaporative testing, this requires measuring initial concentrations. (When testing methanol-fueled vehicles, manufacturers may choose not to measure background concentrations of methanol and/or formaldehyde, and then assume that the concentrations are zero during calculations.)

26. Section 86.127–96 of Subpart B is amended by adding paragraph (g) to read as follows:

§ 86.127–96 Test procedures; overview.

* * * * *

(g) Background concentrations are measured for all species for which emissions measurements are made. For exhaust testing, this requires sampling and analysis of the dilution air. For evaporative testing, this requires measuring initial concentrations. (When testing methanol-fueled vehicles, manufacturers may choose not to measure background concentrations of methanol and/or formaldehyde, and then assume that the concentrations are zero during calculations.)

27. Section 86.137–90 of Subpart B is amended by revising paragraph (b)(20) to read as follows:

§ 86.137–90 Dynamometer test run, gaseous and particulate emissions.

* * * * *

(b) * * *

(20) As soon as possible, transfer the hot start ''transient'' exhaust and dilution air samples to the analytical system and process the samples according to § 86.140, obtaining a stabilized reading of the exhaust bag sample on all analyzers within 20 minutes of the end of the sample collection phase of the test. Obtain methanol and formaldehyde sample analyses, if applicable, within 24 hours of the end of the sample period. (If it is not possible to perform analysis on the methanol and formaldehyde samples, within 24 hours, the samples should be stored in a dark cold (4–10°C) environment until analysis. The samples should be analyzed within fourteen days.)

* * * * *

28. Section 86.137–94 of Subpart B is amended by revising paragraphs (b)(4), (b)(6)(iii), (b)(6)(iv), and (b)(15), and removing the note following paragraph (b)(6)(iv) to read as follows:

§ 86.137–94 Dynamometer test run, gaseous and particulate emissions.

* * * * *

(b) * * *

(4) For methanol-fueled vehicles, with the sample selector valves in the ''standby'' position, insert fresh sample collection impingers into the methanol sample collection system, fresh impingers or a fresh cartridge into the formaldehyde sample collection system and fresh impingers (or a single cartridge for formaldehyde) into the dilution air sample collection systems for methanol and formaldehyde (background measurements of methanol and formaldehyde may be omitted and concentrations assumed to be zero for calculations in § 86.144).

* * * * *

(6) * * *

(iii) For methanol samples, the flow rates shall be set such that the system meets the design criteria of § 86.109 and § 86.110. For samples in which the concentration in the primary impinger exceeds 0.5 mg/l, it is recommended that the mass of methanol collected in the secondary impinger not exceed ten percent of the total mass collected. For samples in which the concentration in the primary impinger does not exceed 0.5 mg/l, analysis of the secondary impingers is not necessary.

(iv) For formaldehyde samples, the flow rates shall be set such that the system meets the design criteria of § 86.109 and § 86.110. For impinger samples in which the concentration of formaldehyde in the primary impinger exceeds 0.1 mg/l, it is recommended that the mass of formaldehyde collected in the secondary impinger not exceed ten percent of the total mass collected. For samples in which the concentration in the primary impinger does not exceed 0.1 mg/l, analysis of the secondary impingers is not necessary.

* * * * *

(15) Five seconds after the engine stops running, simultaneously turn off gas flow measuring device No. 2 and if applicable, turn off the hydrocarbon integrator No. 2, mark the hydrocarbon recorder chart, turn off the No. 2 particulate sample pump and close the valves isolating particulate filter No. 2, and position the sample selector valves to the ''standby'' position (and open the valves isolating particulate filter No. 1, if applicable). Record the measured roll or shaft revolutions (both gas meter or flow measurement instrumentation readings), and reset the counter. As soon as possible, transfer the ''stabilized'' exhaust and dilution air samples to the analytical system and process the samples according to § 86.140, obtaining a stabilized reading of the exhaust bag sample on all analyzers within 20 minutes of the end of the sample collection phase of the test. Obtain methanol and formaldehyde sample analyses, if applicable, within 24 hours of the end of the sample period. (If it is not possible to perform analysis on the methanol and formaldehyde samples within 24 hours, the samples should be stored in a dark cold (4–10°C) environment until analysis. The samples should be analyzed within fourteen days.) If applicable, carefully remove both pairs of particulate sample filters from their respective holders, and place each in a separate petri dish, and cover.

* * * * *

29. Section 86.140–94 of Subpart B is amended by revising paragraphs (c) and (d) to read as follows:

§ 86.140–94 Exhaust sample analysis.

* * * * *

(c) For CH_3OH (methanol-fueled vehicles), introduce test samples into the gas chromatograph and measure the concentration. This concentration is C_{MS} in the calculations.

(d) For HCHO (methanol-fueled vehicles), introduce formaldehyde test samples into the high pressure liquid chromatograph and measure the concentration of formaldehyde as a dinitrophenylhydrazine derivative in acetonitrile. This concentration is C_{FS} in the calculations.

* * * * *

30. Section 86.142–90 of Subpart B is amended by revising paragraphs (p)(1)

through (p)(7), and removing paragraph (p)(8), to read as follows:

§ 86.142–90 Records required.

* * * * *

(p) * * *

(1) Specification of the methanol-fuel or methanol-fuel mixtures used during the test.

(2) Volume of sample passed through the methanol sampling system and the volume of deionized water in each impinger.

(3) The concentration of the GC analyses of the test samples (methanol).

(4) Volume of sample passed through the formaldehyde sampling system and the volume of DNPH solution used.

(5) The concentration of the HPLC analysis of the test sample (formaldehyde).

(6) The temperatures of the sample lines before the HFID and the impinger, the temperature of the exhaust transfer duct (as applicable), and the temperature of the control system of the heated hydrocarbon detector.

(7) A continuous measurement of the dew point of the raw and diluted exhaust. This requirement may be omitted if the temperatures of all heated lines are kept above 220°F, or if the manufacturer performs an engineering analysis demonstrating that the temperature of the heated systems remains above the maximum dew point of the gas stream throughout the course of the test.

* * * * *

31. Section 86.143–90 of Subpart B is amended by revising paragraphs (a)(1) and (a)(2)(iii) to read as follows:

§ 86.143–90 Calculations; evaporative emissions.

(a) * * *

(1) For methanol:

$$M_{CH3OH} = V_n X \times \frac{T_{Ef}}{\left(V_{Ef} \times T_{SHEDf}\right)} \times \left[\left(C_{MS1f} \times AV_{1f}\right) + \left(C_{MS2f \times} AV_{2f}\right)\right]$$

$$- \frac{T_{Ei}}{\left(V_{Ei} \times T_{SHEDi}\right)} \times \left[\left(C_{MS1i} \times AV_{1i}\right) + \left(C_{MS2i} \times AV_{2i}\right)\right]$$

Where:

(i) M_{CH3OH} = Methanol mass change, µg.

(ii) V_n = Net enclosure volume, ft³, as determined by subtracting 50 ft³ (1.42 m³) (volume of vehicle with trunk and windows open) from the enclosure volume. A manufacturer may use the measured volume of the vehicle (instead of the nominal 50 ft³) with advance approval by the Administrator: *Provided*, the measured volume is determined and used for all vehicles tested by that manufacturer.

(iii) T_E = Temperature of sample withdrawn, °R.

(iv) V_E = Volume of sample withdrawn, ft³.

(v) T_{SHED} = Temperature of SHED, °R

(vi) C_{MS} = GC concentration of sample, µg/ml.

(vii) AV = Volume of absorbing reagent in impinger.

(viii) P_B = Barometric pressure at time of sampling, in. Hg.

(ix) i = Initial sample.

(x) f = Final sample.

(xi) 1 = First impinger.

(xii) 2 = Second impinger.

(2) * * *

(iii) C_{CH3OH} = Methanol concentration as ppm carbon.

$$= \frac{1.501 \times 10^{-3} \times T}{P_B \times V_E} \times \left[\left(C_{S1} \times AV_1\right) + \left(C_{S2} \times AV_2\right)\right]$$

* * * * *

32. Section 86.143–96 of Subpart B is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii)(C) to read as follows:

§ 86.143–96 Calculations; evaporative emissions.

* * * * *

(b) * * *

(1) * * *

(i) For methanol:

$$M_{CH3OH} = V_n \times \frac{T_{Ef}}{\left(V_{Ef} \times T_{SHEDf}\right)} \times \left[\left(C_{MS1f} \times AV_{1f}\right) + \left(C_{MS2f} \times AV_{2f}\right)\right]$$

$$- \frac{T_{Ei}}{\left(V_{Ei} \times T_{SHEDi}\right)} \times \left[\left(C_{MS1i} \times AV_{1i}\right) + \left(C_{MS2i} \times AV_{2i}\right)\right] + \left(M_{CH3OH,OUT,} - M_{CH3OH,\epsilon}\right)$$

Where:

(A) M_{CH3OH} = Methanol mass change, µg.

(B) V_n = Net enclosure volume, ft³, as determined by subtracting 50 ft³ (1.42 m³) (volume of vehicle with trunk and windows open) from the enclosure volume. A manufacturer may use the measured volume of the vehicle (instead of the nominal 50 ft³) with advance approval by the Administrator: *Provided*, the measured volume is determined and used for all vehicles tested by that manufacturer.

(C) T_E = Temperature of sample withdrawn, °R.

(D) V_E = Volume of sample withdrawn, ft³.

(E) T_{SHED} = Temperature of SHED, °R

(F) C_{MS} = GC concentration of sample, µg/ml.

(G) AV = Volume of absorbing reagent in impinger.

(H) P_B = Barometric pressure at time of sampling, in. Hg.

(I) i = Initial sample.
(J) f = Final sample.
(K) 1 = First impinger.
(L) 2 = Second impinger.
(M) $M_{CH3OH,\ out}$=mass of methanol exiting the enclosure, in the case of fixed-volume enclosures for diurnal emission testing, µg.
(N) $M_{CH3OH,\ in}$=mass of methanol entering the enclosure, in the case of fixed-volume enclosures for diurnal emission testing, µg.

$$= \frac{1.501 \times 10^{-3} \times T}{P_B \times V_E} \times \left[\left(C_{S1} \times AV_1 \right) + \left(C_{S2} \times AV_2 \right) \right]$$

* * * * *

33. Section 86.144–94 of Subpart B is amended by revising paragraphs (c)(5)(iv) through (c)(5)(xvi), (c)(7)(ii), and (e), and by removing paragraphs (c)(5)(xvii) and (c)(5)(xviii), to read as follows:

§ 86.144–94 Calculations; exhaust emissions.

* * * * *

(c) * * *
(5) * * *
(iv)(A) C_{CH3OHe}=Methanol concentration in the dilute exhaust, ppm.
(B) C_{CH3OHe}=

$$\frac{3.813 \times 10^{-2} \times T_{EM} \left[\left(C_{S1} \times AV_{S1} \right) + \left(C_{S2} \times AV_{S2} \right) \right]}{P_B \times V_{EM}}$$

(v)(A) C_{CH3OHd}=Methanol concentration in the dilution air, ppm.
(B) C_{CH3OHd}=

$$\frac{3.813 \times 10^{-2} \times T_{DM} \left[\left(C_{D1} \times AV_{D1} \right) + \left(C_{D2} \times AV_{D2} \right) \right]}{P_B \times V_{DM}}$$

(vi) T_{EM}=Temperature of methanol sample withdrawn from dilute exhaust, °R.
(vii) T_{DM}=Temperature of methanol sample withdrawn from dilution air, °R.
(viii) P_B=Barometric pressure during test, mm Hg.
(ix) V_{EM}=Volume of methanol sample withdrawn from dilute exhaust, ft^3.
(x) V_{DM}=Volume of methanol sample withdrawn from dilution air, ft^3.
(xi) C_S=GC concentration of sample drawn from dilute exhaust, µg/ml.
(xii) C_D=GC concentration of sample drawn from dilution air, µg/ml.
(xiii) AVS=Volume of absorbing reagent (deionized water) in impinger through which methanol sample from dilute exhaust is drawn, ml.
(xiv) AVD=Volume of absorbing reagent (deionized water) in impinger through which methanol sample from dilution air is drawn, ml.
(xv) 1=first impinger.
(xvi) 2=second impinger.

* * * * *

(7) * * *

(ii) For methanol-fueled vehicles, where fuel composition is $C_xH_yO_z$ as measured, or calculated, for the fuel used:

$$DF = \frac{(100)\dfrac{x}{x + y/2 + 3.76\ (x + y/2 - z/2}}{CO_{2e} + \left(HC_e + CO_e + CH_3OH_e + HCHO_e \right) X10^{-4}}$$

* * * * *

(e) For methanol-fueled vehicles with measured fuel composition of $CH_{3.487}O_{0.763}$, example calculation of exhaust emissions using positive displacement pump:

(1) For the ''transient'' phase of the cold start test assume the following: V_0=0.29344 ft^3 rev; N=25,801; R=37.5 pct; Ra=37.5 percent; P_B=725.42 mm Hg; P_d=22.02 mm Hg; P_4=70 mm Hg; T_p 570 deg.R; FID HC_e=14.65 ppm, carbon equivalent; r=0.788; T_{EM}=527.67 deg.R; V_{EM}=0.2818 ft^3; C_{S1}=7.101; AV_{S1}=15.0 ml; C_{S2}=0.256; AV_{S2}=15.0 ml; T_{DM}=527.67 deg.R; V_{DM}=1.1389 ft^3; C_{D1}=0.439; AV_{D1}=15.0 ml; C_{D2}=0.0; AV_{D2}=15.0 ml; C_{FDE}=8.970 µg/ml; V_{AE}=5.0 ml; Q=0.1429; T_{EF}=527.67 deg.R; V_{SE}=0.2857 ft^3; C_{FDA}=0.39 µg/ml; V_{AA}=5.0 ml; T_{DF}=527.67 deg.R; V_{SA}=1.1043 ft^3; NO_{Xe}=5.273 ppm; CO_{em}=98.8 ppm; CO_{2e}=0.469 pct; CH_{4e}=2.825 ppm; FID HC_d=2.771 ppm; NO_{Xd}=0.146 ppm; CO_{dm}=1.195 ppm; CO_{2d}=0.039 percent; CH_{4d}=2.019 ppm; Dct=3.583 miles.

Then:

(i) V_{mix}=(0.29344)(25,801)(725.42–70)(528)/(760)(570)=6048.1.0 ft^3 per test phase.
(ii) H=(43.478)(37.5)(22.02)/[725.42-(22.02x37.5/100)]=50 grains of water per pound of dry air.
(iii) K_H=1/[1–0.0047(50–75)]=0.8951.
(iv) CO_e=[1-(0.01+0.005×3.487)×0.469)

−0.000323(37.5)) ×98.8=96.332 ppm.

(v) CO_d=(1−0.000323(37.5))×1.195=1.181 ppm.

(vi)

$$C_{CH3OHe} = \frac{(3.813\times10^{-2})\ (527.67)\ [(7.101)\ (15.0)+(0.256)\ (15.0)]}{(725.42)\ (0.2818)} = 10.86\ \text{ppm}$$

(vii) HCe=14.65 −(0.788)(10.86)=6.092.

(viii)

$$DF = \frac{100\ (1/[1+(3.487/2)+3.76\ (1+(3.487/4)-(0.763/2))])}{0.469+(6.092+96.332+10.86+0.664)\ (10^{-4})} = 24.939$$

$$CCH3OH_d = \frac{(3.813\times10^{-2})\ (527.67)\ [(0.439)\ (15.0)+(0.0)\ (15.0)]}{(725.42)\ (1.1389)} = 0.16\ \text{ppm}$$

(x) CH_3OH_{conc}=10.86 − 0.16(1−1/24.939)=10.71 ppm.

(xi) CH_3OH_{mass}=6048.1×37.71×(10.71/1,000,000)=2.44 grams per test phase.

(xii) HC_{conc}=[14.65 − (0.788)(10.86)] − [2.771 − (0.788)(0.16)] (1−1/24.94)=3.553 ppm.

(xiii) HC_{mass}=(6048.1)(16.33)(3.553/1,000,000)=0.35 grams per test phase.

(xiv)

$$C_{HCHOe} = \frac{4.069\times10^{-2}(8.970)\ (5.0)\ (0.1429)\ (527.67)}{(0.2857)\ (725.42)} = 0.664\ \text{ppm}$$

(xv)

$$C_{HCHOd} = \frac{4.069\times10^{-2}(0.39)\ (5.0)\ (0.1429)\ (527.67)}{(1.1043)\ (725.42)} = 0.0075\ \text{ppm}$$

(xvi) $HCHO_{conc}$=0.664−0.0075(1−1/24.939)=0.6568 ppm.

(xvii) $HCHO_{mass}$=(6048.1)(35.36)(0.6568/1,000,000)=0.1405 grams per test phase.

(xviii) THCE=0.35+(13.8756/32.042)(2.44)+(13.8756/30.0262)(0.1405)=1.47 grams per test phase.

(xix) NO_{Xconc}=5.273 − (0.146)(1−1/24.939)=5.13 ppm.

(xx) NO_{Xmass}=(6048.1)(54.16)(5.13/1,000,000)(0.8951)=1.505 grams per test phase.

(xxi) CO_{conc}=96.332 − 1.181(1−1/24.939)=95.2 ppm.

(xxii) CO_{mass}=(6048.1)(32.97)(95.2/1,000,000)=18.98 grams per test phase.

(xxiii) $CO2_{conc}$=0.469−0.039(1−1/24.939)=0.432 percent.

(xxiv) $CO2_{mass}$=(6048.1)(51.85)(0.432/100)=1353 grams.

(xxv) $CH4_{conc}$=2.825−2.019(1−1/24.939)=0.89 ppm.

(xxvi) $NMHC_{conc}$=3.553 ppm − 0.89 ppm=2.67 ppm.

(xxvii) $NMHC_{mass}$=(6048.1)(16.33)(2.67/1,000,000)=0.263 grams per test phase.

(xxviii) $NMHCE_{mass}$=0.263+(13.8756/32.042)(2.44)+(13.8756/30.0262)(0.1405)=1.39 grams per test phase.

(2) For the stabilized portion of the cold start test assume that similar calculations resulted in the following:

(i) THCE=0.143 grams per test phase.

(ii) NO_{Xmass}=0.979 grams per test phase.

(iii) CO_{mass}=0.365 grams per test phase.

(iv) CO_{2mass}=1467 grams per test phase.

(v) D_s=3.854 miles.

(vi) NMHCE=0.113 grams per test phase.

(3) For the ''transient'' portion of the hot start test assume that similar calculations resulted in the following:

(i) THCE=0.488 grams as carbon equivalent per test phase.

(ii) NO_{Xmass}=1.505 grams per test phase.

(iii) CO_{mass}=3.696 grams per test phase.

(iv) CO_{2mass}=1179 grams per test phase.

(v) D_{ht}=3.577 miles.

(vi) NMHCE=0.426 grams per test phase.

(4) Weighted emission results:

(i)

$$THCE_{wm} = (0.43)\frac{(1.473+0.143)}{(3.583+3.854)} + (0.57)\frac{(0.488+0.143)}{(3.577+3.854)} = 0.142\ \text{grams as carbon equivalent per mile}$$

(ii)

$$NOX_{WM} = (0.43)\frac{(1.505+0.979)}{(3.583+3.854)} + (0.57)\frac{(1.505+0.979)}{(3.577+3.854)} = 0.334 \text{ grams per mile}$$

(iii)

$$CO_{wm} = (0.43)\frac{18.983+0.365}{(3.583+3.854)} + (0.57)\frac{(3.696+0.365)}{(3.577+3.854)} = 1.43 \text{ grams per mile}$$

(iv)

$$CO2_{wm} = (0.43)\frac{(1353+1467)}{(3.583+3.854)} + (0.57)\frac{(1179+1467)}{(3.577+3.854)} = 366 \text{ grams per mile}$$

(v)

$$NMHCE_{wm} = (0.43)\frac{(1.386+0.113)}{(3.583+3.854)} + (0.57)\frac{(0.426+0.113)}{(3.577+3.854)} = 0.128 \text{ grams per mile}$$

34. Section 86.509–90 of Subpart F is amended by revising paragraphs (a)(2)(i) through (a)(2)(iv), (a)(3), text of paragraph (a)(4) preceding the figure, paragraphs (b) introductory text, (b)(4), (b)(5), (b)(6), (c) introductory text, (c)(4) and (c)(5), (c)(6), and adding paragraphs (a)(5) and (d) to read as follows:

§ 86.509–90 Exhaust gas sampling system.

(a) * * *

(2) * * *

(i) Using a duct of unrestricted length maintained at a temperature above the maximum dew point of the exhaust, but below 121°C (250°F); heating and possibly cooling capabilities are required; or

(ii) Using a short duct (up to 12 feet long) constructed of smooth wall pipe with a minimum of flexible sections, maintained at a temperature above the maximum dew point of the exhaust, but below 121°C (250°F), prior to the test and during any breaks in the test and uninsulated during the test (insulation may remain in place and/or heating may occur during testing provided maximum temperature is not exceeded); or

(iii) Using smooth wall duct less than five feet long with no required heating. A maximum of two short flexible connectors are allowed under this option; or

(iv) Omitting the duct and performing the exhaust gas dilution function at the motorcycle tailpipe exit.

(3) *Positive displacement pump.* The Positive Displacement Pump-Constant Volume Sampler (PDP–CVS), Figure F90–1 satisfies the first condition by metering at a constant temperature and pressure through the pump. The total volume is measured by counting the revolutions made by the calibrated positive displacement pump. The proportional samples are achieved by sampling at a constant flow rate. For methanol-fueled motorcycle sample lines for the methanol and formaldehyde samples are heated to prevent condensation. The temperature of the sample lines shall be more than 3 °C (5 °F) above the maximum dew point of the sample, but below 121 °C (250 °F). (Note: For 1990 through 1994 model year methanol-fueled motorcycles, methanol and formaldehyde sampling may be omitted provided the bag sample (hydrocarbons and methanol) is analyzed using a HFID calibrated with methanol.)

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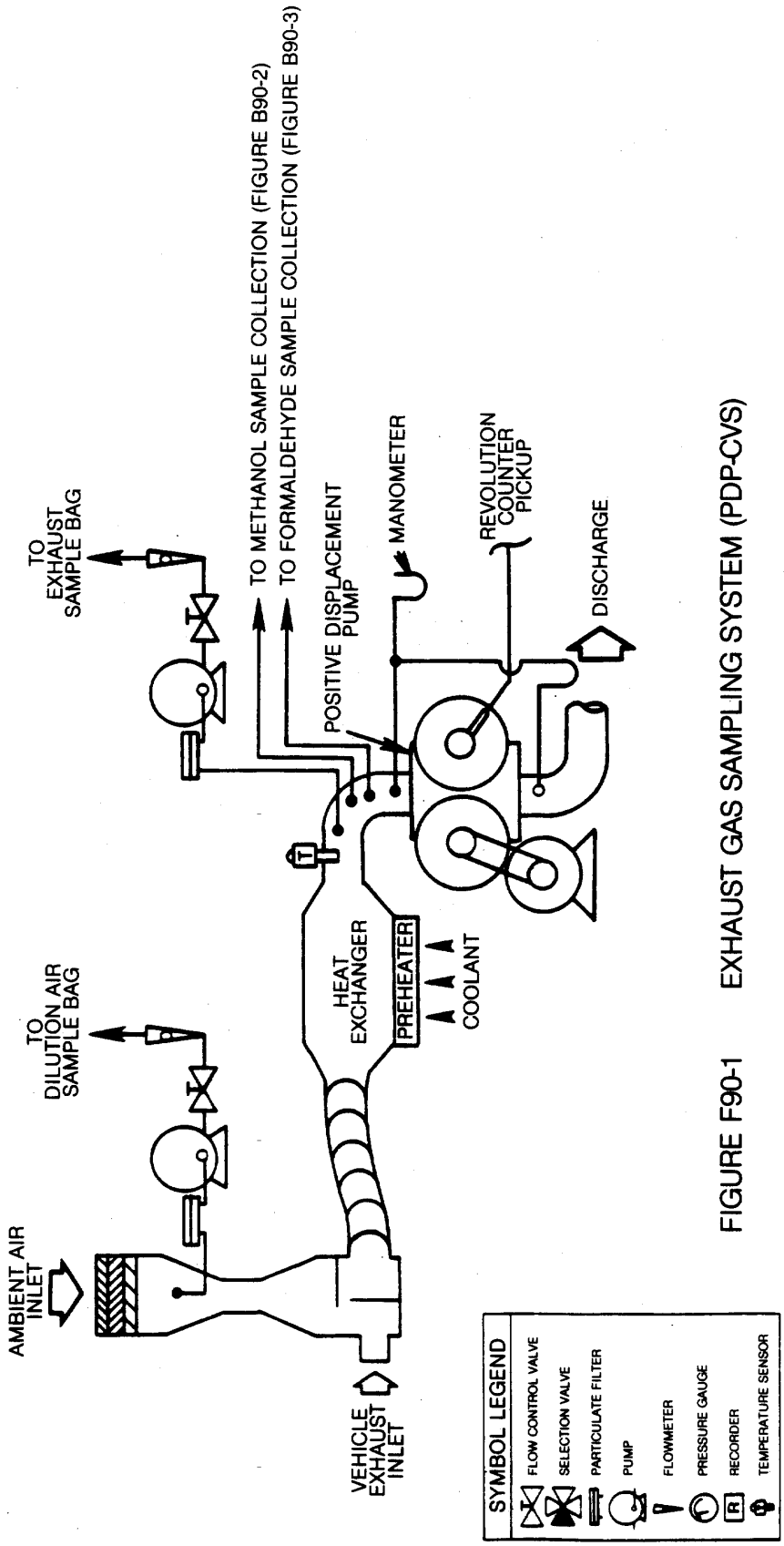

FIGURE F90-1 EXHAUST GAS SAMPLING SYSTEM (PDP-CVS)

BILLING CODE 6560–50–C

(4) *Critical flow venturi.* The operation of the Critical Flow Venturi—Constant Volume Sampler (CFV–CVS) sample system, Figure F90–2, is based upon the principles of fluid dynamics associated with critical flow. Proportional sampling throughout temperature excursions is maintained by use of small CFVs in the sample lines, which respond to the varying temperatures in the same manner as the main CFV. For methanol-fueled motorcycles, the methanol and formaldehyde sample lines are heated to prevent condensation. The temperature of the sample lines shall be more than 3°C (5°F) above the maximum dew point of the sample, but below 121°C (250°F). Care must be taken to ensure that the CFVs of the sample probes are not heated since heating of the CFVs would cause loss of proportionality. (Note: For 1990 through 1994 model year methanol-fueled motorcycles, methanol and formaldehyde sampling may be omitted provided the bag sample (hydrocarbons and methanol) is analyzed using a HFID calibrated with methanol.) Total flow per test is determined by continuously computing and integrating instantaneous flow. A low response time temperature sensor is necessary for accurate flow calculation.

* * * * *

(5) *Electronic Flow Control.* The Critical Flow Venturi—Electronic Flow Control—Constant Volume Sampler (CFV–EFC–CVS) system is identical to the CFV–CVS system described in paragraphs (a)(4) and (c) of this section, except that it maintains proportional sampling for methanol and formaldehyde by measuring the CVS flow rate, and electronically controlling sample flow rates. It is recommended that sample volumes be measured by separate flow meters. For methanol-fueled motorcycles, the samples lines for the methanol and formaldehyde samples are heated to prevent condensation. The temperature of the sample lines shall be more than 20 °F (11 °C) above the maximum dew point of the sample, but below 121 °C (250 °F).

* * * * *

(b) *Component description, PDP-CVS.* The PDP–CVS, Figure F90–1, consists of a dilution air filter and mixing assembly, heat exchanger, positive displacement pump, sampling systems including, probes and sampling lines which, in the case of the methanol-fueled motorcycles, are heated to prevent condensation (heating of the sample lines may be omitted, provided the methanol and formaldehyde sample collection systems are close coupled to the probes thereby preventing loss of sample due to cooling and resulting condensation in the sample lines), and associated valves, pressure and temperature sensors. The PDP–CVS shall conform to the following requirements:

* * * * *

(4) The location of the dilution air inlet shall be placed so as to use test-cell air for dilution and the flow capacity of the CVS shall be large enough to completely eliminate water condensation in the dilution and sampling systems. Control of water condensation with methanol-fueled vehicles is critical. Additional care may also be required to eliminate water condensation when testing natural gas and liquefied petroleum gas-fueled vehicles. (Procedures for determining CVS flow rates are detailed in ''Calculation of Emissions and Fuel Economy When Using Alternative Fuels,'' EPA 460/3–83–009.) Dehumidifying the dilution air before entering the CVS is allowed. Heating the dilution air is also allowed, provided:

(i) The air (or air plus exhaust gas) temperature does not exceed 121°C (250°F).

(ii) Calculation of the CVS flow rate necessary to prevent water condensation is based on the lowest temperature encountered in the CVS prior to sampling. (It is recommended that the CVS system be insulated when heated dilution air is used.)

(iii) The dilution ratio is sufficiently high to prevent condensation in bag samples as they cool to room temperature.

(5) Sample collection bags for dilution air and exhaust samples (hydrocarbons and carbon monoide) shall be of sufficient size so as not to impede sample flow. A single dilution air sample, covering the total test period, may be collected for the determination of methanol and formaldehyde background (methanol-fueled motorcycles).

(6) The methanol sample collection system and the formaldehyde sample collection system shall each be of sufficient capacity so as to collect samples of adequate size for analysis without significant impact on the volume of dilute exhaust passing through the PDP. The systems shall also comply with the following requirements that apply to the design of the systems, not to individual tests:

(i) The methanol system shall be designed such that if a test motorcycle continuously emitted the maximum allowable level of methanol (based on all applicable standards) the measured concentration in the primary impinger would exceed either 25 mg/l or a concentration equal to 25 times the limit of detection for the GC analyzer.

(ii) The formaldehyde system shall be designed such that if a test motorcycle continuously emitted formaldehyde at a rate equal to twenty percent of the maximum allowable level of THCE (*i.e.*, 1.0 g/km for a 5.0 g/km standard), or the maximum formaldehyde level allowed by a specific formaldehyde standard, whichever is less, the concentration of formaldehyde in the DNPH solution of the primary impinger, or solution resulting from the extraction of the DNPH cartridge, shall exceed either 2.5 mg/l or a concentration equal to 25 times the limit of detection for the HPLC analyzer.

(iii) The methanol and formaldehyde systems shall be designed such that the primary impinger collects at least 90 percent of the analyte in the samples. The remaining analyte shall be collected by the secondary impinger. This requirement does not apply to dilution air samples, since they do not require secondary impingers, or to samples in which the concentrations approach the limit of detection.

(c) *Component description, CFV–CVS.* The CFV–CVS sample system, Figure F90–2, consists of a dilution air filter and mixing assembly, a cyclone particulate separator, unheated sampling venturies for the bag samples, and for the methanol and formaldehyde samples from methanol-fueled vehicles, samples lines heated to prevent condensation for the methanol and formaldehyde samples from methanol fueled vehicles (heating of the sample lines may be omitted provided, the methanol and formaldehyde sample collection systems are close coupled to the probes thereby preventing loss of sample due to cooling and resulting condensation in the sample lines), a critical flow venturi, and assorted valves, and pressure and temperature sensors. The CFV sample system shall conform to the following requirements:

* * * * *

(4) The location of the dilution air inlet shall be placed so as to use test-cell air for dilution and the flow capacity of the CVS shall be large enough to completely eliminate water condensation in the dilution and sampling systems. Control of water condensation with methanol-fueled vehicles is critical. Additional care may also be required to eliminate water condensation when testing natural gas and liquefied petroleum gas-fueled vehicles. (Procedures for determining CVS flow rates are detailed in

''Calculation of Emissions and Fuel Economy When Using Alternative Fuels,'' EPA 460/3–83–009.) Dehumidifying the dilution air before entering the CVS is allowed. Heating the dilution air is also allowed, provided:

(i) The air (or air plus exhaust gas) temperature does not exceed 250°F.

(ii) Calculation of the CVS flow rate necessary to prevent water condensation is based on the lowest temperature encountered in the CVS prior to sampling. (It is recommended that the CVS system be insulated when heated dilution air is used.)

(iii) The dilution ratio is sufficiently high to prevent condensation in bag samples as they cool to room temperature.

(5) Sample collection bags for dilution air and exhaust samples (hydrocarbons and carbon monoxide) shall be of sufficient size so as not to impede sample flow. A single dilution air sample, covering the total test period, may be collected for the determination of methanol and formaldehyde background (methanol-fueled motorcycles).

(6) The methanol sample collection system and the formaldehyde sample collection system shall each be of sufficient capacity so as to collect samples of adequate size for analysis without significant impact on the volume of dilute exhaust passing through the CVS. The systems shall also comply with the following requirements that apply to the design of the systems, not to individual tests:

(i) The methanol system shall be designed such that if a test motorcycle continuously emitted the maximum allowable level of methanol (based on all applicable standards) the measured concentration in the primary impinger would exceed either 25 mg/l or a concentration equal to 25 times the limit of detection for the GC analyzer.

(ii) The formaldehyde system shall be designed such that if a test motorcycle continuously emitted formaldehyde at a rate equal to twenty percent of the maximum allowable level of THCE (*i.e.*, 1.0 g/km for a 5.0 g/km standard), or the maximum formaldehyde level allowed by a specific formaldehyde standard, whichever is less, the concentration of formaldehyde in the DNPH solution of the primary impinger, or solution resulting from the extraction of the DNPH cartridge, shall exceed either 2.5 mg/l or a concentration equal to 25 times the limit of detection for the HPLC analyzer.

(iii) The methanol and formaldehyde systems shall be designed such that the primary impinger collects at least 90 percent of the analyte in the samples. The remaining analyte shall be collected by the secondary impinger. This requirement does not apply to dilution air samples, since they do not require secondary impingers, or to samples in which the concentrations approach the limit of detection.

(d) *Component description, CFV–EFC–CVS.* The CVS sample system is identical to the system described in paragraph (c) of this section, plus includes a means of electronically measuring the CVS flow rate, and electronic mass flow controllers for the methanol and formaldehyde sample lines, and separate flow meters to totalize sample flow volumes (optional). The EFC sample system shall conform to all of the requirements listed in paragraph (c) of this section, except that the methanol and formaldehyde samples mat both be drawn from a single static probe. It also must comply with the following additional requirements:

(1) The ratio of the CVS flow rate to the sample flow rate shall not deviate from the ratio at the start of the test by more than ±5 percent. (The volumetric sample flow rate shall be varied inversely with the square root of the bulk stream temperature.)

(2) Flow totalizers for methanol and/or formaldehyde samples shall have an accuracy of ±2 percent. Total sample volumes may be obtained from the flow controllers, with the advance approval of the administrator, provided that the controllers can be shown to have an accuracy of ±2 percent.

35. Section 86.513–94 of Subpart F is amended by revising paragraphs (c)(1) and (c)(2), and adding paragraph (c)(3) to read as follows:

§ 86.513–94 Fuel and engine lubricant specifications.

* * * * *

(c) * * * (1) mixtures of petroleum and methanol fuels used for exhaust and evaporative emission testing and service accumulation for flexible fuel motorcycles shall consist of the petroleum fuel listed in paragraph (a) of this section and the methanol fuel listed in paragraph (b), and shall be within the range of fuel mixtures for which the vehicle was designed, as reported in accordance with § 86.90–21. The Administrator may use any fuel or fuel mixture within this range for testing.

(2) The fuel mixtures used by the manufacturers shall be sufficient to demonstrate compliance over the full design range, and shall include:

(i) For emission testing,

(A) The petroleum fuel specified in paragraph (a) or (b),

(B) A methanol fuel representative of the methanol fuel expected to the found in use, as specified in paragraph (b),

(ii) For service accumulation, an alternating combination of the fuels specified in paragraphs (a) and (b) will be used to demonstrate the durability of the emission control systems based on good engineering judgement. The combination shall be selected such that the cumulative volumes of both the methanol fuel and the petroleum fuel used shall be at least twenty-five percent of the total fuel volume. The fuels shall be alternated at mileage intervals not to exceed 1,000 kilometers.

(3) The specification range of the fuels to be used under paragraph (c) of this section shall be reported in accordance with § 86.094–21.

* * * * *

36. Section 86.514–78 of Subpart F is amended by revising paragraphs (a)(2) and (b), and adding paragraph (c) to read as follows:

§ 86.514–78 Analytical gases.

(a) * * *

(2) Gases for the THC analyzer shall be:

(i) Single blends of propane using air as the diluent; and

(ii) Optionally, for response factor determination, single blends of methanol using air as the diluent.

* * * * *

(b) Calibration gases (not including methanol) shall be known to within 2 percent of true values.

(c) Methanol in air gases used for response factor determination shall:

(1) Be traceable to within ±2 percent of NIST (formerly NBS) gas standards, or other gas standards which have been approved by the Administrator; and

(2) Remain within ±2 percent of the labeled concentration. Demonstration of stability shall be based on a quarterly measurement procedure with a precision of ±2 percent (two standard deviations), or other method approved by the Administrator. The measurement procedure may incorporate multiple measurements. If the true concentration of the gas changes by more than two percent, but less than ten percent, the gas may be relabeled with the new concentration.

37. Section 86.516–90 of Subpart F is amended by revising paragraph (c)(1) to read as follows:

§ 86.516–90 Calibrations, frequency and overview.

* * * * *

(c) * * *

(1) Calibrate the hydrocarbon analyzer, methane analyzer, carbon dioxide analyzer, carbon monoxide

analyzer, and oxides of nitrogen analyzer (certain analyzers may require more frequent calibration depending on particular equipment and uses).

* * * * *

38. Section 86.519–90 of Subpart F is amended by revising paragraphs (d)(1), (d)(4), and (d)(7) to read as follows:

§ 86.519–90 Constant volume sampler calibration.

* * * * *

(d) * * *

(1) Obtain a small cylinder that has been charged with pure propane or carbon monoxide gas (CAUTION—carbon monoxide is poisonous).

* * * * *

(4) Following completion of step (3) above (if methanol injection is required), continue to operate the CVS in the normal manner and release a known quantity of pure methanol (in gaseous form) into the system during the sampling period (approximately 5 minutes). This step does not need to be performed with each verification, provided that it is performed at least twice annually.

* * * * *

(7) The cause for any discrepancy greater than ±2 percent must be found and corrected. The Administrator, upon request, may waive the requirement to comply with ±2 percent methanol recovery tolerance, and instead require compliance with a higher tolerance (not to exceed ±6 percent), provided that:

(i) The Administrator determines that compliance with the specified tolerance is not practically feasible; and

(ii) The manufacturer makes information available to the Administrator which indicates that the calibration tests and their results are consistent with good laboratory practice, and that the results are consistent with the results of calibration testing conducted by the Administrator.

39. Section 86.521–90 of Subpart F is amended by revising paragraphs (d) introductory text, (d)(1), and (d)(3)(iii) to read as follows:

§ 86.521–90 Hydrocarbon analyzer calibration.

* * * * *

(d) *FID response factor to methanol.* When the FID analyzer is to be used for the analysis of hydrocarbon samples containing methanol, the methanol response factor of the analyzer shall be established. The methanol response factor shall be determined at several concentrations in the range of concentrations in the exhaust sample, using either bag samples or gas bottles meeting the requirements of § 86.514.

(1) The bag sample, if used, of methanol for analysis in the FID shall be prepared using the apparatus shown in Figure F90–4. A known volume of methanol is injected, using a microliter syringe, into the heated mixing zone (250°F (121°C)) of the apparatus. The methanol is vaporized and swept into the sample bag with a known volume of zero grade air measured by a gas flow meter meeting the performance requirements of § 86.120.

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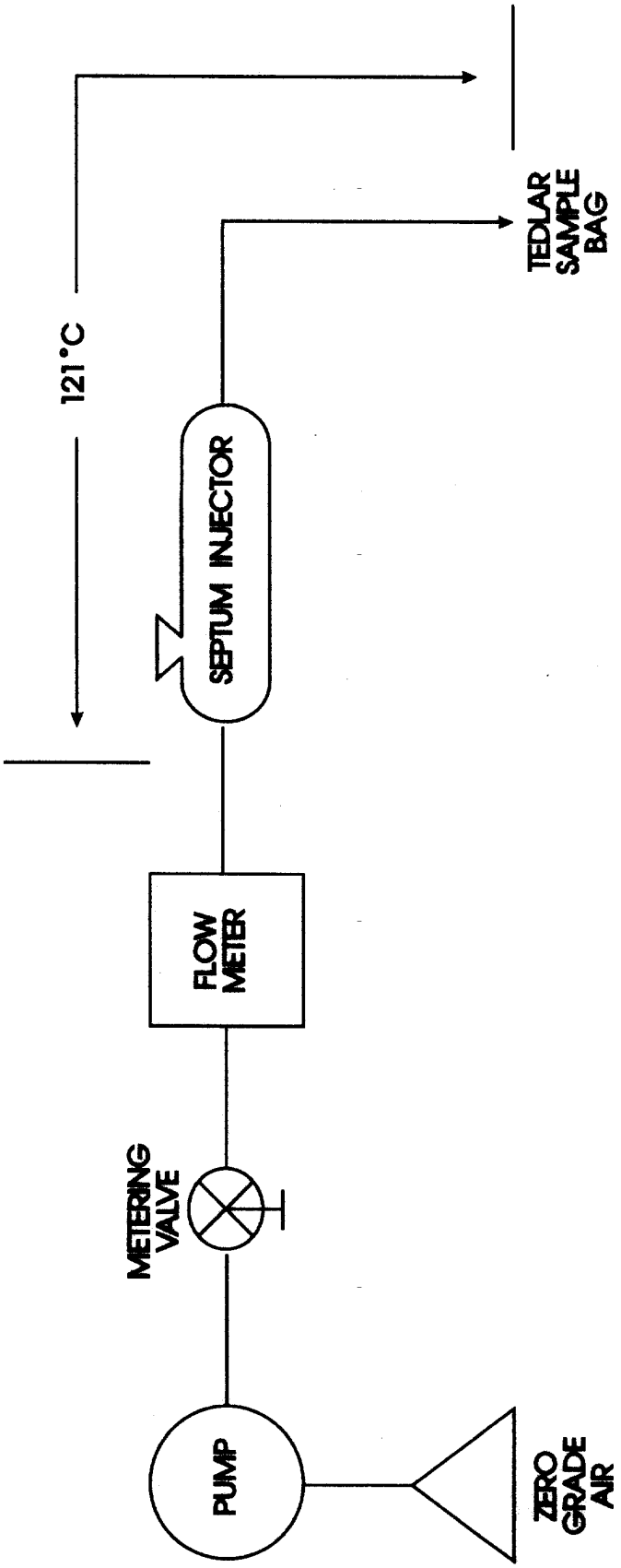

FIGURE F90-4 APPARATUS FOR PREPARATION OF FID METHANOL RESPONSE CALIBRATION MIX

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* * * * *

(3) * * *

(iii) SAMppm=methanol concentration in the sample bag, or gas bottle, in ppmC. SAMppm for sample bags:

$$= \frac{0.02406 \times \text{Fuel injected} \times \text{Fuel density}}{\text{Air volume} \times \text{Mol. Wt. } CH_3OH}$$

Where:

* * * * *

40. Section 86.523–78 of Subpart F is amended by adding paragraph (c) to read as follows:

§ 86.523–78 Oxides of nitrogen analyzer calibration.

* * * * *

(c) When testing methanol-fueled motorcycles, it may be necessary to clean the analyzer frequently to prevent interference with NO_X measurements (see EPA/600/S3–88/040).

41. Section 86.527–90 of Subpart F is amended by adding paragraph (e) to read as follows:

§ 86.527–90 Test procedures, overview.

* * * * *

(e) Background concentrations are measured for all species for which emissions measurements are made. For exhaust testing, this requires sampling and analysis of the dilution air. (When testing methanol-fueled motorcycles, manufacturers may choose not to measure background concentrations of methanol and/or formaldehyde, and then assume that the concentrations are zero during calculations.)

42. Section 86.537–90 of Subpart F is amended by revising paragraphs (b)(4), (b)(6)(iii), (b)(6)(iv), (b)(12), and (b)(14), and by removing the note following paragraph (b)(6)(iv) to read as follows:

§ 86.537–90 Dynamometer test runs.

* * * * *

(b) * * *

(4) For methanol-fueled vehicles, with the sample selector valves in the ''standby'' position, insert fresh sample collection impingers into the methanol sample collection system, fresh impingers or a fresh cartridge into the formaldehyde sample collection system and fresh impingers (or a single cartridge for formaldehyde) into the dilution air sample collection systems for methanol and formaldehyde (background measurements of methanol and formaldehyde may be omitted and concentrations assumed to be zero for calculations in § 86.544).

* * * * *

(6) * * *

(iii) For methanol samples, the flow rates shall be set such that the system meets the design criteria of § 86.509. For samples in which the concentration in the primary impinger exceeds 0.5 mg/l, it is recommended that the mass of methanol collected in the secondary impinger not exceed ten percent of the total mass collected. For samples in which the concentration in the primary impinger does not exceed 0.5 mg/l, secondary impingers do not need to be analyzed.

(iv) For formaldehyde samples, the flow rates shall be set such that the system meets the design criteria of § 86.509. For impinger samples in which the concentration of formaldehyde in the primary impinger exceeds 0.1 mg/l, it is recommended that the mass of formaldehyde collected in the secondary impinger not exceed ten percent of the total mass collected. For samples in which the concentration in the primary impinger does not exceed 0.1 mg/l, secondary impingers do not need to be analyzed.

* * * * *

(12) At the end of the deceleration which is scheduled to occur at 505 seconds, simultaneously switch the sample flows from the ''transient'' bags and samples to ''stabilized'' bags and samples, switch off gas flow measuring device No. 1 and, start gas flow measuring device No. 2. Before the acceleration which is scheduled to occur at 510 seconds, record the measured roll or shaft revolutions and reset the counter or switch to a second counter. As soon as possible, transfer the ''stabilized'' exhaust and dilution air samples to the analytical system and process the samples according to § 86.540, obtaining a stabilized reading of the exhaust bag sample on all analyzers within 20 minutes of the end of the sample collection phase of the test. Obtain methanol and formaldehyde sample analyses, if applicable, within 24 hours of the end of the sample period. (If it is not possible to perform analysis on the methanol and formaldehyde samples within 24 hours, the samples should be stored in a dark cold (4–10°C) environment until analysis. The samples should be analyzed within fourteen days.)

* * * * *

(14) Five seconds after the engine stops running, simultaneously turn off gas flow measuring device No. 2 and position the sample selector valves to the ''standby'' position (and open the valves isolating particulate filter No. 1, if applicable). Record the measured roll or shaft revolutions (both gas meter or flow measurement instrumentation readings) and re-set the counter. As soon as possible, transfer the ''stabilized'' exhaust and dilution air samples to the analytical system and process the samples according to § 86.540, obtaining a stabilized reading of the exhaust bag sample on all analyzers within 20 minutes of the end of the sample collection phase of the test. Obtain methanol and formaldehyde sample analyses, if applicable, within 24 hours of the end of the sample period. (If it is not possible to perform analysis on the methanol and formaldehyde samples within 24 hours, the samples should be stored in a dark cold (4–10°C) environment until analysis. The samples should be analyzed within fourteen days.)

* * * * *

43. Section 86.540–90 of Subpart F is amended by revising paragraphs (b) and (c) to read as follows:

§ 86.540–90 Exhaust sample analysis.

* * * * *

(b) For CH_3OH (methanol-fueled vehicles), introduce test samples into the gas chromatograph and measure the concentration. This concentration is C_{MS} in the calculations.

(c) For HCHO (methanol-fueled vehicles), introduce test samples into the high pressure liquid chromatograph and measure the concentration of formaldehyde as a dinitropheylhydrazine derivative in acetonitrile. This concentration is C_{FS} in the calculations.

44. Section 86.542–90 of Subpart F is amended by revising paragraph (p) to read as follows:

§ 86.542–90 Records required.

* * * * *

(p) Additional required records for methanol-fueled vehicles:

(1) Specification of the methanol fuel, or fuel mixtures, used during testing.

(2) Volume of sample passed through the methanol sampling system and the volume of deionized water in each impinger.

(3) The methanol calibration information from the GC standards.

(4) The concentration of the GC analyses of the test samples (methanol).

(5) Volume of sample passed through the formaldehyde sampling system.

(6) The formaldehyde calibration information from the HPLC standards.

(7) The concentration of the HPLC analysis of the test sample (formaldehyde).

* * * * *

45. Section 86.544–90 of Subpart F is amended by revising paragraphs (c)(5)(iv) through (c)(5)(xvi), and (c)(7)(ii), and removing paragraphs (c)(5)(xvii), (c)(5)(xviii), and (e) to read as follows:

§ 86.544–90 Calculations; exhaust emissions.

* * * * *

(c) * * *

(5) * * *

(iv)(A) C_{CH3OHe}=Methanol concentration in the dilute exhaust, ppm.

(B)

$$C_{CH3OHe} = \frac{3.813\times10^{-2}\times T_{EM}\left[\left(C_{S1}\times AV_{S1}\right)+\left(C_{S2}\times AV_{S2}\right)\right]}{P_B\times V_{EM}}$$

(v)(A) C_{CH3OHd}=Methanol concentration in the dilution air, ppm.

$$C_{CH3OHd} = \frac{3.813\times10^{-2}\times T_{DM}\left[\left(C_{D1}\times AV_{D1}\right)+\left(C_{D2}\times AV_{D2}\right)\right]}{P_B\times V_{DM}}$$

(B)

(vi) T_{EM}=Temperature of methanol sample withdrawn from dilute exhaust, °R.

(vii) T_{DM}=Temperature of methanol sample withdrawn from dilution air, °R.

(viii) P_B=Barometric pressure during test, mm Hg.

(ix) V_{EM}=Volume of methanol sample withdrawn from dilute exhaust, ft^3.

(x) V_{DM}=Volume of methanol sample withdrawn from dilution air, ft^3.

(xi) C_s=GC concentration of sample drawn from dilute exhaust, μg/ml.

(xii) C_D=GC concentration of sample drawn from dilution air, μg/ml.

(xiii) AV_s=Volume of absorbing reagent (deionized water) in impinger through which methanol sample from dilute exhaust is drawn, ml.

(xiv) AV_D=Volume of absorbing reagent (deionized water) in impinger through which methanol sample from dilution air is drawn, ml.

(xv) 1=first impinger.

(xvi) 2=second impinger.

* * * * *

(7) * * *

(ii) For methanol-fueled, natural gas-fueled or liquefied petroleum gas-fueled motorcycles, where fuel composition is $C_xH_yO_z$ as measured, or calculated, for the fuel used (for natural gas and liquefied petroleum gas-fuel, Z=0):

$$DF = \frac{(100)\dfrac{x}{(x+y/2+3.76)(x+y/2-z/2)}}{CO_{2e}+\left(HC_e+CO_e+CH_3OH_e=HCHO_e\right)X10^{-4}}$$

* * * * *

46. Section 86.1207–90 of Subpart M is amended by revising paragraphs (b)(1) introductory text and (c)(2), and adding paragraph (b)(3) to read as follows:

§ 86.1207–90 Sampling and analytical system; evaporative emissions.

* * * * *

(b) * * *

(1) For gasoline and methanol-fueled vehicles a hydrocarbon analyzer utilizing the hydrogen flame ionization principle (FID) shall be used to monitor the atmosphere within the enclosure (a heated FID (HFID)(235°±15°F (113±8°C)) is recommended for methanol-fueled vehicles). Instrument bypass flow may be returned to the enclosure. The FID shall have a response time to 90 percent of final reading of less than 1.5 seconds, and be capable of meeting performance requirements expressed as a function of Cstd: where Cstd is the specific enclosure hydrocarbon level, in ppm, corresponding to the evaporative emission standard:

* * * * *

(3) The methanol sampling system described in paragraph (b)(2) of this section shall be designed such that, if a test vehicle emitted the maximum allowable level of methanol (based on all applicable standards) during any phase of the test, the measured concentration in the primary impinger would exceed either 25 mg/l or a concentration equal to 25 times the limit of detection for the GC analyzer, and such that the primary impinger collects at least 90 percent of the analyte in the samples. The remaining analyte shall be collected by the secondary impinger. The provisions of this paragraph apply to the design of sampling systems, not to individual tests.

(c) * * *

(2) For the methanol sample, permanent records shall be made of the following: the volumes of deionized water introduced into each impinger, the rate and time of sample collection and the chromatogram of the analyzed sample.

* * * * *

47. Section 86.1207–96 of Subpart M is amended by revising paragraphs (b)(1) and (c)(2), and adding paragraph (b)(3) to read as follows:

§ 86.1207–96 Sampling and analytical systems; evaporative emissions.

* * * * *

(b) * * *

(1) For gasoline-, liquefied petroleum gas-, natural gas- and methanol-fueled vehicles a hydrocarbon analyzer utilizing the hydrogen flame ionization principle (FID) shall be used to monitor the atmosphere within the enclosure (a heated FID (HFID)(235°±15°F (113±8°C)) is recommended for methanol-fueled vehicles). Provided evaporative emission results are not affected, a probe may be used to detect or verify hydrocarbon sources during a running loss test. Instrument bypass flow may be returned to the enclosure. The FID shall have a response time to 90 percent of final reading of less than 1.5 seconds.

* * * * *

(3) The methanol sampling system described in paragraph (b)(2) of this section shall be designed such that, if a test vehicle emitted the maximum allowable level of methanol (based on all applicable standards) during any phase of the test, the measured concentration in the primary impinger would exceed either 25 mg/l or a concentration equal to 25 times the limit of detection for the GC analyzer, and such that the primary impinger collects at least 90 percent of the analyte in the samples. The remaining analyte shall be collected by the secondary impinger. The provisions of this paragraph apply to the design of sampling systems, not to individual tests.

(c) * * *

(2) For the methanol sample, permanent records shall be made of the following: the volumes of deionized water introduced into each impinger, the rate and time of sample collection and the chromatogram of the analyzed sample.

* * * * *

48. Section 86.1213–94 is amended by revising paragraph (c) to read as follows:

§ 86.1213–94 Fuel specifications.

* * * * *

(c) *Mixtures of petroleum and methanol fuels for flexible fuel vehicles.* (1) Mixtures of petroleum and methanol fuels used for exhaust and evaporative emission testing and service accumulation for flexible fuel vehicles shall consist of the gasoline listed in paragraph (a) of this section and the methanol fuel listed in paragraph (b) of this section, and shall be within the range fuel mixtures for which the vehicle was designed as reported in accordance with § 86.94–21. The Administrator may use any fuel within this range for testing.

(2) The fuel mixtures used by the manufacturers shall be sufficient to demonstrate compliance over the full design range, and shall include:

(i) For emission testing:

(A) The petroleum fuel specified in paragraph (a) of this section;

(B) A methanol fuel representative of the methanol fuel expected to be found in use, as specified in paragraph (d) of this section; and

(C) A combination of the fuels specified in paragraphs (c)(2)(i)(A) and (B) of this section that represents the composition which results in the highest Reid Vapor Pressure for the mixture. The mixture shall contain between nine and thirteen percent methanol.

(ii) For service accumulation, an alternating combination of the fuels specified in paragraphs (a) and (b) of this section that, based on good engineering judgement, demonstrates the durability of the emission control system. The fuels may be used as a single mixture or alternated.

(iii) Or, other combinations for testing or service accumulation which demonstrate compliance with the standards over the entire design range of the vehicle, provided that written approval is obtained from the Administrator prior to the start of testing.

(3) The specification range of the fuels to be used under paragraph (c) of this section shall be reported in accordance with § 86.094–21.

* * * * *

49. Section 86.1214–85 of Subpart M is amended by revising paragraphs (a)(1), (a)(2), (b) and (c) and adding paragraph (d) to read as follows:

§ 86.1214–85 Analytical gases.

(a) * * *

(1) Gases for the hydrocarbon analyzer shall be:

(i) Single blends of propane using air as the diluent; and

(ii) Optionally, for response factor determination, single blends of methanol using air as the diluent.

(2) Fuel for the evaporative emission enclosure FID (or HFID for methanol-fueled vehicles) shall be a blend of 40 ±2 percent hydrogen with the balance being helium. The mixture shall contain less than 1 ppm equivalent carbon response. 98 to 100 percent hydrogen fuel may be used with advance approval by the Administrator.

* * * * *

(b) Calibration gases (not including methanol) shall be traceable to within one percent of NIST (formerly NBS) gas standards, or other gas standards which have been approved by the Administrator.

(c) Span gases (not including methanol) shall be accurate to within two percent of true concentration, where true concentration refers to NIST (formerly NBS) gas standards, or other gas standards which have been approved by the Administrator.

(d) Methanol in air gases used for response factor determination shall:

(1) Be traceable to within ±2 percent of NIST (formerly NBS) gas standards, or other gas standards which have been approved by the Administrator; and

(2) Remain within ±2 percent of the labeled concentration. Demonstration of stability shall be based on a quarterly measurement procedure with a precision of ±2 percent (two standard deviations), or other method approved by the Administrator. The measurement procedure may incorporate multiple measurements. If the true concentration of the gas changes by more than two percent, but less than ten percent, the gas may be relabeled with the new concentration.

50. Section 86.1216–90 of Subpart M is amended by revising paragraphs (c)(1) and (c)(3), and adding paragraphs (d) and (e) to read as follows:

§ 86.1216–90 Calibrations; frequency and overview.

* * * * *

(c) * * *

(1) Calibrate the hydrocarbon analyzer (see § 86.1221). Certain analyzers may require more frequent calibration depending on particular equipment and uses.

* * * * *

(3) Perform a hydrocarbon retention check and calibration on the evaporative emission enclosure (see § 86.1217).

(d) At least twice annually or after any maintenance perform a methanol retention check and calibration on the evaporative emission enclosure (see § 86.1217).

(e) Calibrate the methanol analyzer as often as required by the manufacturer or as necessary according to good practice.

51. Section 86.1217–90 of Subpart M is amended by revising paragraphs (c)(5), (c)(7) and (c)(9), (d)(1), (d)(2) introductory text and (d)(2)(i) through (d)(2)(iii) to read as follows:

§ 86.1217–90 Evaporative emission enclosure calibrations.

* * * * *

(c) * * *

(5) Inject into the enclosure a known quantity of pure propane (4g is a convenient quantity) and a known quantity of pure methanol (4g is a convenient quantity) in gaseous form; i.e., at a temperature of at least 150–155°F (65–68°C). The propane and methanol may be measured by volume flow or by mass measurement. The

method used to measure the propane and methanol shall have an accuracy of ±0.5 percent of the measured value. (Less accurate methods may be used with the advanced approval of the Administrator.) The methanol and propane tests do not need to be conducted simultaneously.

* * * * *

(7) To verify the enclosure calibration, calculate the mass of propane and the mass of methanol using the measurements taken in steps (4) and (6). See paragraph (d) of this section. This quantity must be within ±2 percent of that measured in step 5 above. (For 1991–1995 calendar years, the difference may exceed ±2 percent for methanol, provided it does not exceed ±6 percent.)

* * * * *

(9) Calculate, using the equation in paragraph (d) of this section and the readings taken in step (8), the hydrocarbon and methanol mass. It may not differ by more than ±4 percent of the value in step (6). (For 1991–1995 calendar year methanol-fueled vehicles, the difference may exceed ±4 percent for methanol, provided it does not exceed ±6 percent.)

(d) *Calculations.* (1) The calculation of net methanol and hydrocarbon mass change is used to determine enclosure background and leak rate. It is also used to check the enclosure volume measurements. The methanol mass change is calculated from the initial and final methanol samples, temperature and pressure according to the following equation:

$$M_{CH3OH} = V \times \frac{T_{Ef}}{V_{Ef} \times T_{SHEDf}} \left[\left(C_{MS1f} AV_{1f} \right) + \left(C_{MS2f} AV_{2f} \right) \right] - \frac{T_{Ei}}{V_{Ei} \times T_{SHEDi}} \left[\left(C_{MS1i} \times AV_{1i} \right) + \left(C_{MS2i} \times AV_{2i} \right) \right]$$

Where:

(i) M_{CH3OH}=Methanol mass change, µg.

(ii) V=Enclosure volume, ft^3, as measured in paragraph (b)(1) of this section.

(iii) T_E=Temperature of sample withdrawn, °R.

(iv) V_E=Volume of sample withdrawn, ft^3.

(v) P_B=Barometric pressure at time of sampling, in. Hg.

(vi) C_{MS}=GC concentration of test sample.

(vii) AV=Volume of absorbing reagent in impinger.

(viii) i=Initial sample.

(ix) f=Final sample.

(x) 1=First impinger.

(xi) 2=Second impinger.

(2) The hydrocarbon mass change is calculated from the initial and final FID readings of hydrocarbon concentration, methanol concentration with FID response to methanol, temperature, and pressure according to the following equation:

$$M_{HC} = kV \times 10^{-4} \frac{\left(C_{HCf} - rC_{CH3OHf} \right)}{T_f} \times P_{Bf} - \frac{\left(C_{HCi} - rC_{CH3OHi} \right)}{T_i} \times P_{Bi}$$

Where:

(i) M_{HC}=Hydrocarbon mass change, g.

(ii) C_{HC}=FID hydrocarbon concentration as ppm carbon including FID response to methanol in the sample.

(iii) C_{CH3OH}=Methanol concentration as ppm carbon.

$$= \frac{1.501 \times 10^{-3} \times T_e}{P_B \times V_E} \times \left[\left(C_{S1} \times AV_1 \right) + \left(C_{S2} \times AV_2 \right) \right]$$

* * * * *

52. Section 86.1217–96 of Subpart M is amended by revising paragraphs (c)(1)(vii), (c)(1)(ix), (c)(1)(xii), (d)(1), (d)(2) introductory text, and (d)(2)(i) through (d)(2)(iii), and adding paragraph (c)(4) to read as follows:

§ 86.1217–96 Evaporative emission enclosure calibrations.

* * * * *

(c) * * *

(1) * * *

(vii) Inject into the enclosure 2 to 6 grams of pure propane and 2 to 6 grams of pure methanol in gaseous form; i.e., at a temperature of at least 150°F (65°C). The propane and methanol may be measured by volume flow or by mass measurement. The method used to measure the propane and methanol shall have an accuracy and precision of ±0.2 percent of the measured value. (Less accurate methods may be used with advanced approval of the Administrator.) The methanol and propane tests do not need to be conducted simultaneously.

* * * * *

(ix) To verify the enclosure calibration, calculate the mass of propane and the mass of methanol using the measurements taken in paragraphs (c)(1)(vi) and (viii) of this section. See paragraph (d) of this section. This quantity must be within ±2 percent of that measured in paragraph (c)(1)(vii) of this section. (For calendar years through 1995, the difference may exceed ±2 percent for methanol, provided it does not exceed ±6 percent.)

* * * * *

(xii) At the completion of the 24-hour cycling period, analyze the enclosure atmosphere for hydrocarbon and methanol content; determine the net withdrawn methanol (in the case of diurnal emission testing with fixed-volume enclosures); record temperature and barometric pressure. These are the final readings for the hydrocarbon and methanol retention check. The final hydrocarbon and methanol mass, calculated in paragraph (d) of this section, shall be within 3 percent of that determined in paragraph (c)(1)(viii) of this section. (For calendar years through 1995, the difference may exceed ±3 percent for methanol, provided it does not exceed ±6 percent.)

* * * * *

(4) The Administrator, upon request, may waive the requirement to comply with ±2 percent methanol recovery tolerance, and/or the ±3 percent retention tolerance and instead require

compliance with higher tolerances (not to exceed ±6 percent for recoveries and ±8 for retention), provided that:

(i) The Administrator determines that compliance with these specified tolerances is not practically feasible; and

(ii) The manufacturer makes information available to the Administrator which indicates that the calibration tests and their results are consistent with good laboratory practice, and that the results are consistent with the results of calibration testing conducted by the Administrator.

(d) *Calculations.* (1) The calculation of net methanol and hydrocarbon mass change is used to determine enclosure background and leak rate. It is also used to check the enclosure volume measurements. The methanol mass change is calculated from the initial and final methanol samples, temperature and pressure according to the following equation:

$$M_{CH3OH} = V \times \frac{T_{Ef}}{V_{Ef} \times T_{SHEDf}} \left[\left(C_{MS1f} \times AV_{1f} \right) + \left(C_{MS2f} \times AV_{2f} \right) \right] - \frac{T_{Ei}}{V_{Ei} \times T_{SHEDi}} \left[\left(C_{MS1i} \times AV_{1i} \right) + \left(C_{MS2i} \times AV_{2i} \right) \right]$$

Where:

(i) M_{CH3OH}=Methanol mass change, µg.

(ii) V=Enclosure volume, ft^3, as measured in paragraph (b)(1) of this section.

(iii) T_E=Temperature of sample withdrawn, R.

(iv) T_{SHED}=Temperature of enclosure, R.

(v) V_E=Volume of sample withdrawn, ft^3.

(vi) P_B=Barometric pressure at time of sampling, in. Hg.

(vii) C_{MS}=GC concentration of test sample.

(viii) AV=Volume of absorbing reagent in impinger.

(ix) i=Initial sample.

(x) f=Final sample.

(xi) 1=First impinger.

(xii) 2=Second impinger.

(2) The hydrocarbon mass change is calculated from the initial and final FID readings of hydrocarbon concentration, methanol concentration with FID response to methanol, temperature, and pressure according to the following equation:

$$M_{HC} = kV \times 10^{-4} \frac{\left(C_{HCf} - rC_{CH3OHf} \right)}{T_f} \times P_{BF} - \frac{\left(C_{HCi} - rC_{CH3OHi} \right)}{Ti} \times PBi$$

Where:

(i) M_{HC}=Hydrocarbon mass change, g.

(ii) C_{HC}=FID hydrocarbon concentration as ppm carbon including FID response to methanol in the sample.

(iii) C_{CH3OH}=Methanol concentration as ppm carbon

$$= \frac{1.501 \times 10^{-3} \times T_e}{P_B \times V_E} \times \left[\left(C_{S1} \times AV_1 \right) + \left(C_{S2} \times AV_2 \right) \right]$$

* * * * *

53. Section 86.1221–90 of Subpart M is amended by revising paragraphs (c) introductory text, (c)(1), and (c)(3)(iii) to read as follows:

§ 86.1221–90 Hydrocarbon analyzer calibration.

* * * * *

(c) *FID response factor to methanol.* When the FID analyzer is to be used for the analysis of hydrocarbon samples containing methanol, the methanol response factor of the analyzer shall be established. The methanol response factor shall be determined at several concentrations in the range of concentrations in the exhaust sample, using either bag samples or gas bottles meeting the requirements of § 86.114.

(1) The bag sample of methanol for analysis in the FID, if used, shall be prepared using the apparatus shown in Figure M90–1. A known volume of methanol is injected, using a microliter syringe, into the heated mixing zone (250°F (121°C) of the apparatus. The methanol is vaporized and swept into the sample bag with a known volume of zero grade air measured by a gas flow meter with an accuracy of ±2 percent.

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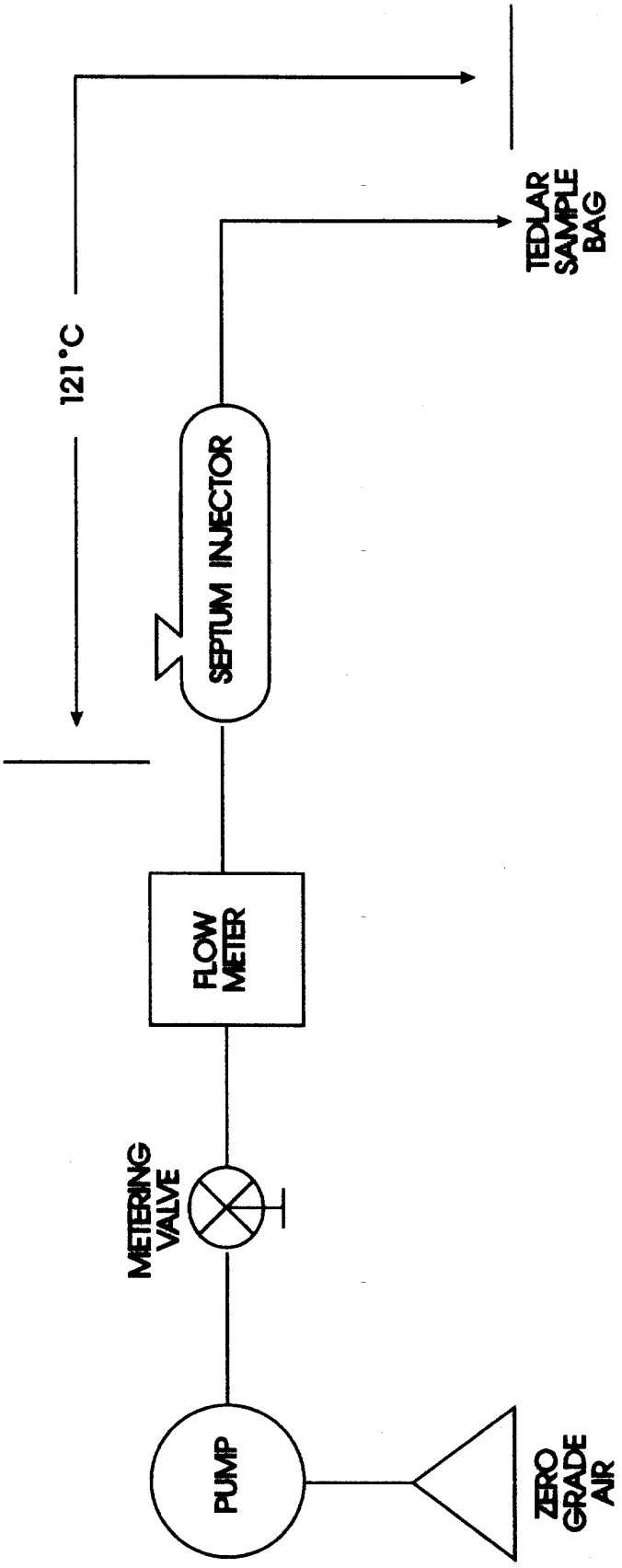

FIGURE M90-1 APPARATUS FOR PREPARATION OF FID METHANOL RESPONSE CALIBRATION MIX

BILLING CODE 6560–50–C

* * * * *

(3) * * *

(iii) SAMppm=methanol concentration in the sample bag, or gas bottle, in ppmC. SAMppm for sample bags:

$$= \frac{0.02406 \times \text{Fuel injected} \times \text{Fuel density}}{\text{Air volume} \times \text{Mol. Wt. } CH_3OH}$$

Where:

* * * * *

54. Section 86.1227–90 of Subpart M is amended by adding paragraph (c) to read as follows:

§ 86.1227–90 Test procedures; overview.

* * * * *

(c) Background concentrations are measured for all species for which emissions measurements are made. For evaporative testing, this requires measuring initial concentrations. (When testing methanol-fueled vehicles, manufacturers may choose not to measure background concentrations of methanol, and then assume that the concentrations are zero during calculations.)

55. Section 86.1227–96 of Subpart M is amended by adding paragraph (c) to read as follows:

§ 86.1227–96 Test procedures; overview.

* * * * *

(c) Background concentrations are measured for all species for which emissions measurements are made. For evaporative testing, this requires measuring initial concentrations. (When testing methanol-fueled vehicles, manufacturers may choose not to measure background concentrations of methanol, and then assume that the concentrations are zero during calculations.)

56. Section 86.1242–90 of Subpart M is amended by revising paragraph (l)(2), and removing paragraph (l)(3) to read as follows:

§ 86.1242–90 Records required.

* * * * *

(l) * * *

(2) The concentration of the GC analyses of the test samples (methanol).

* * * * *

57. Section 86.1243–90 of Subpart M is amended by revising paragraphs (a) introductory text, (a)(1), (a)(2) introductory text, and (a)(2)(i) through (a)(2)(iii) to read as follows:

§ 86.1243–90 Calculations; evaporative emissions.

(a) The calculation of the net hydrocarbon, methanol and hydrocarbon plus methanol mass change in the enclosure is used to determine the diurnal and hot soak mass emissions. The mass changes are calculated from initial and final hydrocarbon and methanol concentrations in ppm carbon, initial and final enclosure ambient temperatures, initial and final barometric pressures, and net enclosure volume using the following equations:

(1) For methanol:

$$M_{CH3OH} = V_n \times \frac{T_{Ef}}{\left(V_E \times T_{SHEDf}\right)} \times \left[\left(C_{MS1f} \times AV_{1f}\right) + \left(C_{MS2f} \times AV_{2f}\right)\right]$$

$$- \frac{T_{Ei}}{\left(V_E \times T_{SHEDi}\right)} \times \left[\left(C_{MS1i} \times AV_{1i}\right) + \left(C_{MS2i} \times AV_{2i}\right)\right]$$

Where:

(i) M_{CH3OH}=Methanol mass change, µg.

(ii) V_n=Net enclosure volume, ft^3, as determined by subtracting 50 ft^3 (1.42 m^3) (volume of vehicle with trunk and windows open) from the enclosure volume. A manufacturer may use the measured volume of the vehicle (instead of the nominal 50 ft^3) with advance approval by the Administrator: *Provided,* the measured volume is determined and used for all vehicles tested by that manufacturer.

(iii) T_E=Temperature of sample withdrawn, °R.

(iv) V_E=Volume of sample withdrawn, ft^3.

(v) T_{SHED}=Temperature of SHED, °R

(vi) P_B=Barometric pressure at time of sampling, in. Hg.

(vii) C_{MS}=GC concentration of sample.

(viii) AV=Volume of absorbing reagent in impinger.

(ix) i=Initial sample.

(x) f=Final sample.

(xi) 1=First impinger.

(xii) 2=Second impinger.

(2) For hydrocarbons:

$$M_{HC} = \left(kV_n \times 10^{-4}\right) \frac{\left(C_{HCf} - rC_{CH3OHf}\right)P_{Bf}}{T_f}$$

$$- \frac{\left(C_{HCi} - rC_{CH3OHi}\right)P_{Bi}}{T_i}$$

Where:

(i) M_{HC}=Hydrocarbon mass change, g.

(ii) C_{HC}=FID hydrocarbon concentration as ppm carbon including FID response to methanol in the sample.

(iii) C_{CH23OH}=Methanol concentration as ppm carbon.

$$= \frac{1.501 \times 10^{-3} \times T}{P_B \times V_E} \times \left[\left(C_{S1} \times AV_1 \right) + \left(C_{S2} \times AV_2 \right) \right]$$

* * * * *

58. Section 86.1243–96 of Subpart M is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii)(C) to read as follows:

§ 86.1243–96 Calculations; evaporative emissions.

* * * * *

(b) * *

(1) * * *

Methanol emissions:

$$M_{CH3OH} = V_n \times \frac{T_{Ef}}{V_E \times T_{SHEDf}} \times \left[\left(C_{MS1f} \times AV_{1f} \right) + \left(C_{MS2f} \times AV_{2f} \right) \right]$$

$$- \frac{T_{Ei}}{\left(V_E \times T_{SHEDi} \right)} \times \left[\left(C_{MS1i} \times AV_{1i} \right) + \left(C_{MS2i} \times AV_{2i} \right) \right]$$

$$+ M_{CH3OH,OUT} - M_{CH3OH,\in}$$

Where:

(A) M_{CH23OH}=Methanol mass change, µg.

(B) VF_n=Net enclosure volume, ft^3, as determined by subtracting 50 ft^3 (1.42 m^3) (volume of vehicle with trunk and windows open) from the enclosure volume. A manufacturer may use the measured volume of the vehicle (instead of the nominal 50 ft^3) with advance approval by the Administrator: Provided, the measured volume is determined and used for all vehicles tested by that manufacturer.

(C) T_E=Temperature of sample withdrawn, °R.

(D) V_E=Volume of sample withdrawn, ft^3.

(E) T_{SHED}=Temperature of SHED, °R.

(F) AC_{MS}=GC concentration of sample.

(G) AV=Volume of absorbing reagent in impinger.

(H) P_B=Barometric pressure at time of sampling, in. Hg.

(I) i=Initial sample.

(J) f=Final sample.

(K) 1=First impinger.

(L) 2=Second impinger.

(M) $M_{CH3OH,out}$=mass of methanol exiting the enclosure, in the case of fixed volume enclosures for diurnal emission testing, µg,

(N) $M_{CH3OH,in}$=mass of methanol entering the enclosure, in the case of fixed volume enclosures for diurnal emission testing, µg,

(ii) * * *

(C) C_{CH3OH}=Methanol concentration as ppm carbon.

$$= \frac{1.501 \times 10^{-3} \times T}{P_B \times V_E} \times \left[\left(C_{S1} \times AV_1 \right) + \left(C_{S2} \times AV_2 \right) \right]$$

* * * * *

59. Section 86.1309–90 of Subpart N is amended by revising paragraph (a)(2), text of paragraph (a)(3) preceding the figures, paragraphs (a)(4), (b) introductory text, (b)(4), (b)(5), (b)(6), (c) introductory text, (c)(4), (c)(5), and (c)(6), redesignating paragraphs (a)(5) and (a)(6) as paragraphs (a)(6) and (a)(7), adding paragraphs (a)(5) and (d), and revising Figures N90–2 and N90–3 to read as follows:

§ 86.1309–90 Exhaust gas sampling system; Otto-cycle engines.

(a) * * *

(2) *Engine exhaust to CVS duct.* For methanol-fueled engines, reactions of the exhaust gases in the exhaust duct connected to the dilution tunnel (for the purposes of this paragraph, the exhaust duct excludes the length of pipe representative of the vehicle exhaust pipe) shall be minimized. This may be accomplished by:

(i) Using a duct of unrestricted length maintained at a temperature below 599°F (315°C). (Cooling capabilities as required); or

(ii) Using a smooth wall duct less than five feet long with no required heating (a maximum of two short flexible connectors are allowed under this option); or

(iii) Omitting the duct and performing the exhaust gas dilution function at the engine exhaust manifold, immediately after exhaust aftertreatment systems, or after a length of pipe representative of the vehicle exhaust pipe; or

(iv) Partial dilution of the exhaust gas prior to entering the dilution tunnel, which lowers the duct temperature below 599°F (315°C).

(3) *Positive displacement pump.* The Positive Displacement Pump Constant Volume Sampler (PDP–CVS), Figure N90–1 satisfies the first condition by metering at a constant temperature and pressure through the pump. The total volume is measured by counting the revolutions made by the calibrated positive displacement pump. The proportional samples for the bag sample, the methanol sample (Figure N90–2), and the formaldehyde sample (Figure N90–3), as applicable are achieved by sampling at a constant flow rate. For methanol-fueled engines, the sample lines for the methanol and formaldehyde samples are heated to prevent condensation. (Note: For 1990 through 1994 model year methanol-fueled engines, methanol and formaldehyde sampling may be omitted provided the bag sample (hydrocarbons and methanol) is analyzed using a HFID calibrated with methanol.)

* * * * *

BILLING CODE 6560–50–P

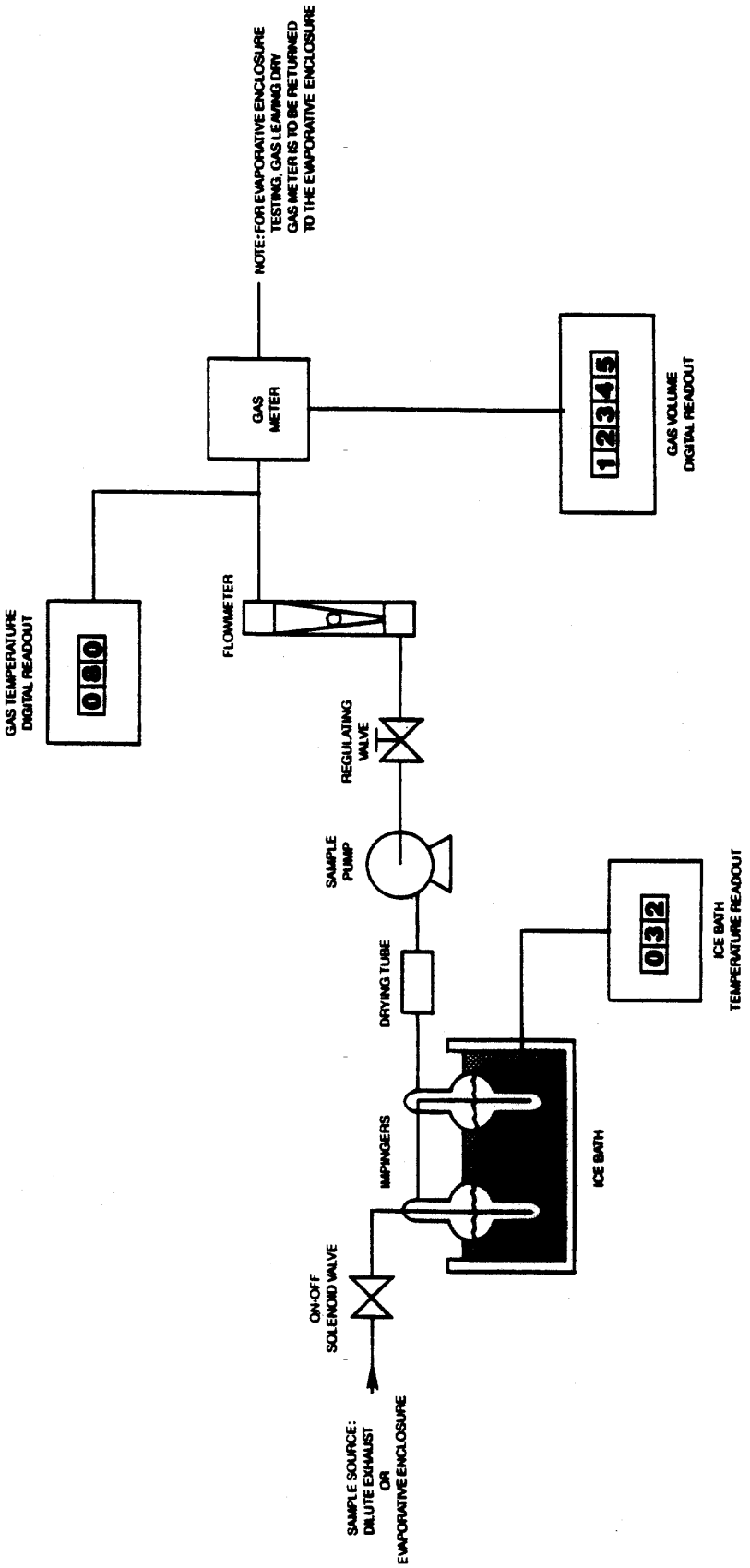

FIGURE N90-2 METHANOL SAMPLE COLLECTION FLOW SYSTEM

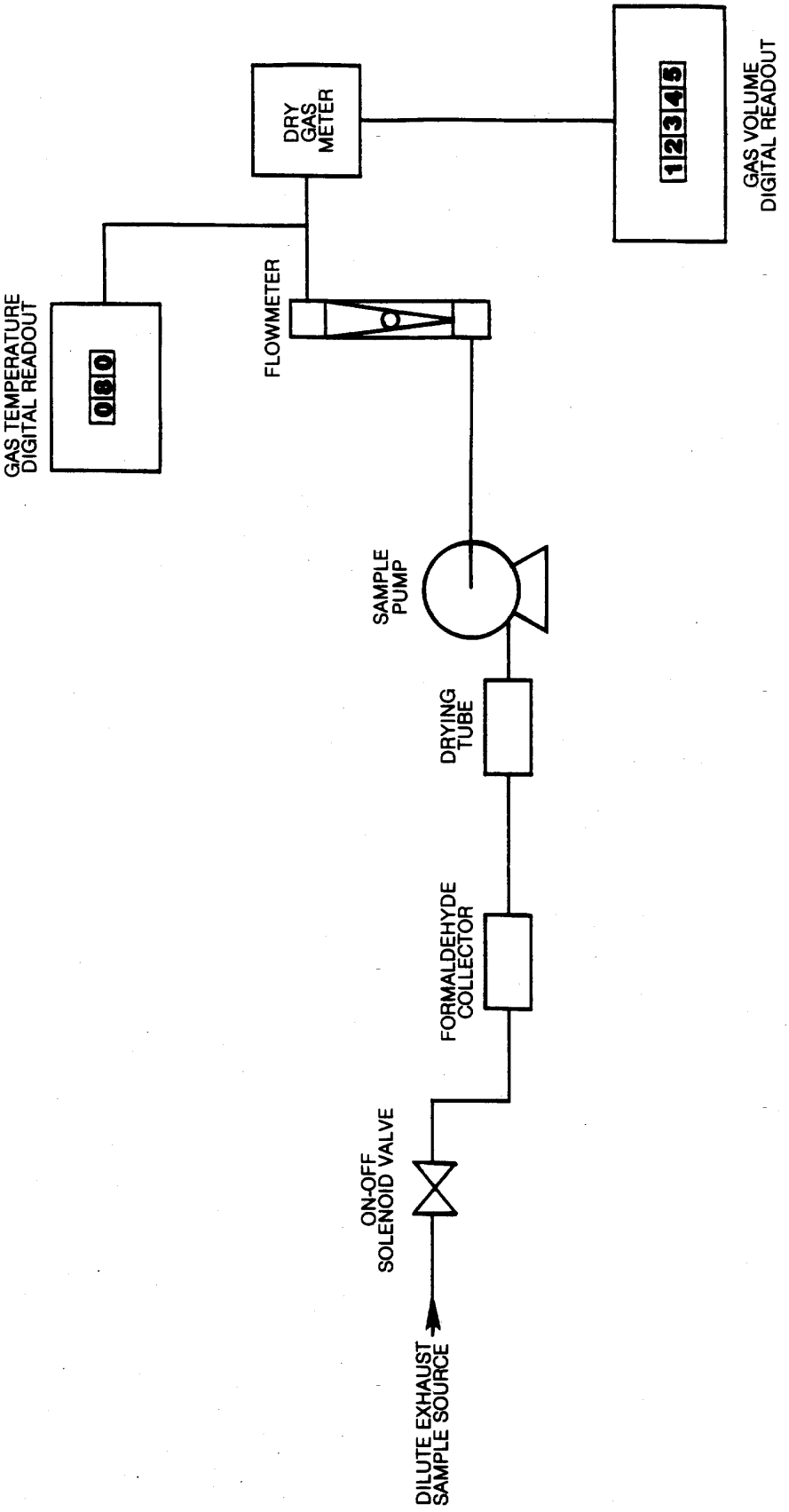

FIGURE N90-3 FORMALDEHYDE SAMPLE COLLECTION FLOW SCHEMATIC

BILLING CODE 6560–50–C

(4) *Critical flow venturi.* The operation of the Critical Flow Venturi Constant Volume Sampler (CFV–CVS), Figure N90–4 is based upon the principles of fluid dynamics associated with critical flow. The CFV system is commonly called a constant volume system (CVS) even though the flow varies. It would be more proper to call the critical flow venturi (CFV) system a constant proportion sampling system since proportional sampling throughout temperature excursions is maintained by use of a small CFVs in the sample lines. For engines requiring measurement of methanol and/or formaldehyde, one line supplies sample for the bag sample, another line supplies sample for the methanol sample, and a third line supplies sample for the formaldehyde sample. The lines for the methanol and formaldehyde samples are heated to prevent condensation with care being taken to ensure that the CFVs of the sample probes are not heated. (Note: For 1990 through 1994 model year methanol-fueled engines, methanol and formaldehyde sampling may be omitted provided the bag sample (hydrocarbons and methanol) is analyzed using a HFID calibrated with methanol. The variable mixture flow rate is maintained at choked flow, which is inversely proportional to the square root of the gas temperature, and is computed continuously. Since the pressure and temperature are the same at all venturi inlets, the sample volume is proportional to the total volume.)

BILLING CODE 6560–50–P

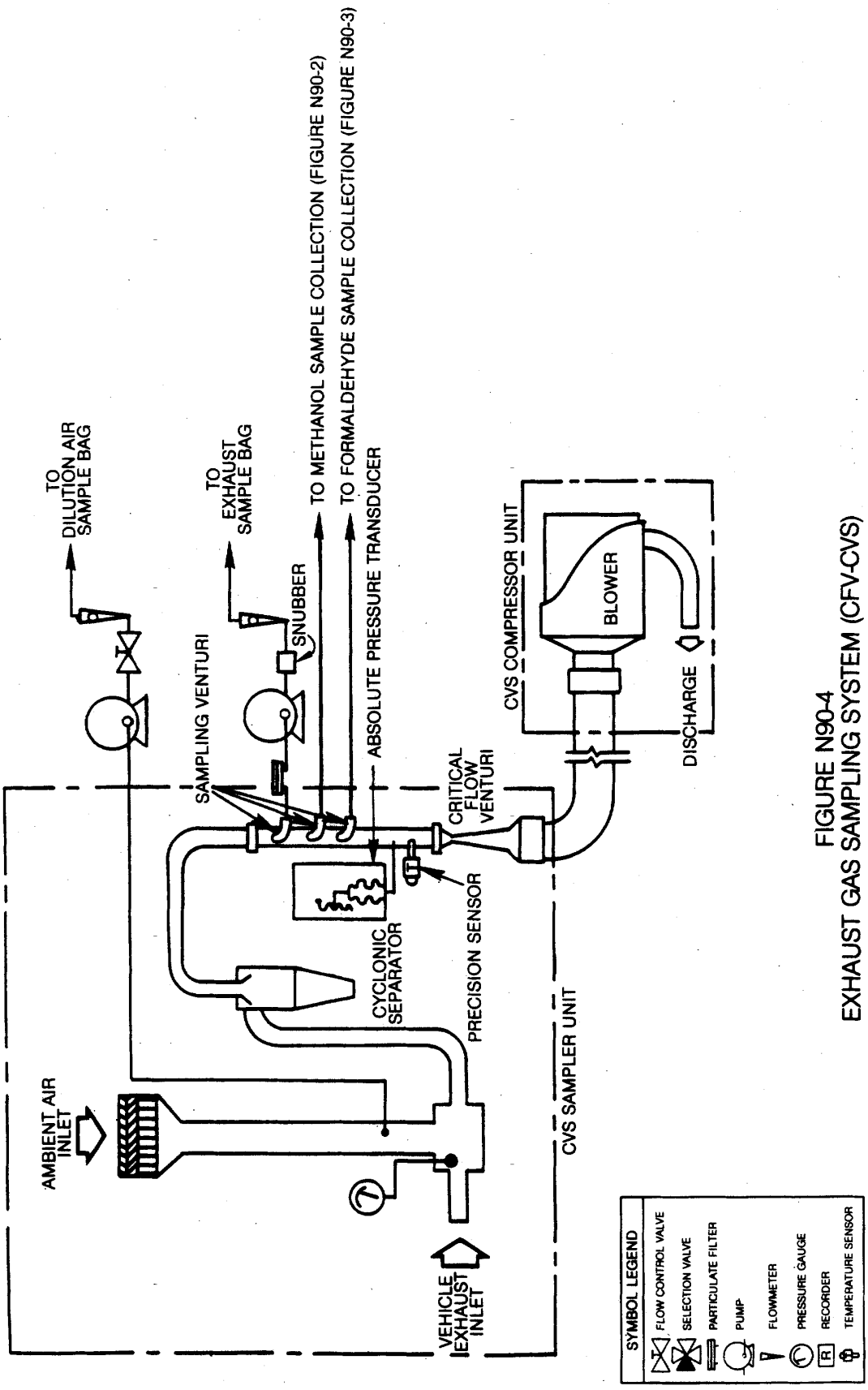

FIGURE N90-4
EXHAUST GAS SAMPLING SYSTEM (CFV-CVS)

BILLING CODE 6560–50–C

(5) *Electronic Flow Control.* The Electronic Flow Control Critical Flow Venturi Constant Volume Sampler (EFC–CFV–CVS) is identical to the CFV–CVS system, except that it uses electronic mass flow meters to maintain proportional sampling for methanol and formaldehyde. The flow rate of the exhaust plus dilution air and the sample flow rate are measured electronically. Proportionality is maintained by electronically controlled metering valves in the methanol and formaldehyde sample lines. Control of the valves is based on the electronic response of the flow meters. It is recommended that total flow sample volumes be measured by separate flow meters. For methanol-fueled engines, one line supplies sample for the bag sample, another line supplies sample for the methanol sample, and a third line supplies sample for the formaldehyde sample. The sample lines for methanol and for formaldehyde may both draw samples from a single static probe. The lines for the methanol and formaldehyde samples are heated to prevent condensation.

* * * * *

(b) *Component description,* PDP–CVS. The PDP–CVS, Figure N90–1, consists of a dilution air filter and mixing assembly, heat exchanger, positive displacement pump, sampling systems (see Figure N90–2 for methanol sampling system and Figure N90–3 for formaldehyde sampling system) including sampling lines which are heated to prevent condensation in the case of the methanol-fueled engine, and associated valves, pressure and temperature sensors. The temperature of the sample lines shall be more than 5°F (3°C) above the maximum dew point of the mixture and less than 250°F (121°C). (It is recommended the they be maintained at 235± 15°F (113 ±8°C)). Heating of the sample lines may be omitted, provided the methanol and formaldehyde sample collection systems are close coupled to the probes thereby preventing loss of sample due to cooling and resulting condensation in the sample lines. The PDP–CVS shall conform to the following requirements:

* * * * *

(4) The flow capacity of the CVS shall be large enough to eliminate water condensation in the system. This is especially critical for methanol-fueled engines and may also be of concern with natural gas- and liquefied petroleum gas-fueled engines; see ''Calculation of Emissions and Fuel Economy When Using Alternative Fuels,'' EPA 460/3–83–009. Dehumidifying the dilution air before entering the CVS is allowed. Heating is also allowed, provided:

(i) The air (or air plus exhaust gas) temperature does not exceed 250°F, or 125°F if particulate emissions are measured;

(ii) Calculation of the CVS flow rate necessary to prevent water condensation is based on the lowest temperature encountered in the CVS prior to sampling. (It is recommended that the CVS system be insulated when heated dilution air is used.);

(iii) The dilution ratio is sufficiently high to prevent condensation in bag samples as they cool to room temperature.

(5) Sample collection bags for dilution air and exhaust samples shall be of sufficient size so as not to impede sample flow. A single dilution air sample, covering the total test period, may be collected for the determination of methanol and formaldehyde background (where applicable).

(6) The methanol sample collection system and the formaldehyde sample collection system shall each be of sufficient capacity so as to collect samples of adequate size for analysis without significant impact on the volume of dilute exhaust passing through the PDP. The systems shall also comply with the following requirements that apply to the design of the systems, not to individual tests:

(i) The methanol system shall be designed such that, if a test engine emitted the maximum allowable level of methanol (based on all applicable standards) during the first phase of the test, the measured concentration in the primary impinger would exceed either 25 mg/l or a concentration equal to 25 times the limit of detection for the GC analyzer.

(ii) The formaldehyde system shall be designed such that, if a test engine emitted formaldehyde at a rate equal to twenty percent of the maximum allowable level of THCE (i.e., 0.2 g/Bhp-hr for a 1.1 g/Bhp-hr THCE standard), or the maximum formaldehyde level allowed by a specific formaldehyde standard, whichever is less, during the first phase of the test, the concentration of formaldehyde in the DNPH solution of the primary impinger, or solution resulting from the extraction of the DNPH cartridge, shall exceed either 2.5 mg/l or a concentration equal to 25 times the limit of detection for the HPLC analyzer.

(iii) The methanol and formaldehyde systems shall be designed such that the primary impinger collects at least 90 percent of the analyte in the samples. The remaining analyte shall be collected by the secondary impinger. Sampling systems shall be identical for all phases.

(c) *Component description, CFV.* The CFV sample system, Figure N90–4, consists of a dilution air filter (optional) and mixing assembly, cyclone particulate separator (optional), unheated sampling venturies for the bag, methanol and formaldehyde samples, as applicable, heated sample lines to prevent condensation in the case of the methanol-fueled engine, critical flow venturi, and associated valves, pressure and temperature sensors. The temperature of the sample lines shall be more than 5°F (3°C) above the maximum dew point of the mixture and less than 250°F (121°C). (It is recommended the they be maintained at 235 ±15°F (113 ± 8°C)). Heating of the sample lines may be omitted, provided the methanol and formaldehyde sample collection systems are close coupled to the probes thereby preventing loss of sample due to cooling and resulting condensation in the sample lines. The CFV sample system shall conform to the following requirements:

* * * * *

(4) The flow capacity of the CVS shall be large enough to eliminate water condensation in the system. This is especially critical for methanol-fueled engines and may also be of concern with natural gas- and liquefied petroleum gas-fueled engines; see ''Calculation of Emissions and Fuel Economy When Using Alternative Fuels,'' EPA 460/3–83–009. Dehumidifying the dilution air before entering the CVS is allowed. Heating is also allowed, provided:

(i) The air (or air plus exhaust gas) temperature does not exceed 250°F, or 125°F if particulate emissions are measured.

(ii) Calculation of the CVS flow rate necessary to prevent water condensation is based on the lowest temperature encountered in the CVS prior to sampling. (It is recommended that the CVS system be insulated when heated dilution air is used.)

(iii) The dilution ratio is sufficiently high to prevent condensation in bag samples as they cool to room temperature.

(5) Sample collection bags for dilution air and exhaust samples shall be of sufficient size so as not to impede sample flow. A single dilution air sample, covering the total test period, may be collected for the determination of methanol and formaldehyde background (where applicable).

(6) The methanol sample collection system and the formaldehyde sample collection system shall each be of sufficient capacity so as to collect

samples of adequate size for analysis without significant impact on the volume of dilute exhaust passing through the CFV. The systems shall also comply with the following requirements that apply to the design of the systems, not to individual tests:

(i) The methanol system shall be designed such that, if a test engine emitted the maximum allowable level of methanol (based on all applicable standards) during the first phase of the test, the measured concentration in the primary impinger would exceed either 25 mg/l or a concentration equal to 25 times the limit of detection for the GC analyzer.

(ii) The formaldehyde system shall be designed such that, if a test engine emitted formaldehyde at a rate equal to twenty percent of the maximum allowable level of THCE (i.e., 0.2 g/Bhp-hr for a 1.1 g/Bhp-hr THCE standard), or the maximum formaldehyde level allowed by a specific formaldehyde standard, whichever is less, during the first phase of the test, the concentration of formaldehyde in the DNPH solution of the primary impinger, or solution resulting from the extraction of the DNPH cartridge, shall exceed either 2.5 mg/l or a concentration equal to 25 times the limit of detection for the HPLC analyzer.

(iii) The methanol and formaldehyde systems shall be designed such that the primary impinger collects at least 90 percent of the analyte in the samples. The remaining analyte shall be collected by the secondary impinger. Sampling systems shall be identical for all phases of the test.

(d) *Component description, EFC–CFV.* The EFC–CFV sample system, is identical to the CFV system described in paragraph (c) of this section, with the addition of electronic flow controllers, metering valves, separate flow meters to totalize sample flow volumes (optional), for methanol and formaldehyde samples. Both samples may be drawn from a single static probe. The EFC sample system shall conform to the following requirements:

(1) All of the requirements of paragraph (c) of this section.

(2) The ratio of sample flow to CVS flow must not vary by more ±5 percent from the setpoint of the test.

(3) The sample flow totalizers shall meet the accuracy specifications of § 86.1320. Total sample flow volumes may be obtained from the flow controllers, with advance approval of the Administrator, provided that they can be shown to meet the accuracy specifications of § 86.1320.

60. Section 86.1310–90 of Subpart N is amended by revising the section heading, paragraph (a) introductory text, the text of paragraph (a)(1) preceding the figures, paragraphs (a)(4), (a)(5), (b)(1)introductory text, (b)(1)(i)introductory text, (b)(1)(ii), and (b)(1)(iii), to read as follows.

§ 86.1310–90 Exhaust gas sampling and analytical system; diesel engines.

(a) *General.* The exhaust gas sampling system described in this paragraph is designed to measure the true mass of both gaseous and particulate emissions in the exhaust of petroleum-fueled, natural gas-fueled, liquefied petroleum gas-fueled and methanol-fueled heavy-duty diesel engines. This system utilizes the CVS concept (described in § 86.1309) of measuring the combined mass emissions of HC, CH_3OH and HCHO from methanol-fueled engines and CO, CO_2 and particulate from all fuel types. A continuously integrated system is required for THC (petroleum-fueled, natural gas-fueled, and liquefied petroleum gas-fueled engines) and NO_X (all engines) measurement, and is allowed for all CO and CO_2 measurements plus the combined emissions of CH_3OH, HCHO, and HC from methanol-fueled engines. Where applicable, separate sampling systems are required for methanol and for formaldehyde. The mass of gaseous emissions is determined from the sample concentration and total flow over the test period. The mass of particulate emissions is determined from a proportional mass sample collected on a filter and from the sample flow and total flow over the test period. As an option, the measurement of total fuel mass consumed over a cycle may be substituted for the exhaust measurement of CO_2. General requirements are as follows:

(1) This sampling system requires the use of a PDP–CVS and a heat exchanger, a CFV–CVS (or an EFC–CFV–CVS) with either a heat exchanger or electronic flow compensation. Figure N90–5 is a schematic drawing of the PDP system. Figure N90–6 is a schematic drawing of the CFV–CVS system.

* * * * *

(4) For methanol-fueled engines, cooling or reaction of the exhaust gases in the exhaust duct connected to the dilution tunnel (for the purposes of this paragraph, the exhaust duct excludes the length of pipe representative of the vehicle exhaust pipe) shall be minimized. This may be accomplished by:

(i) Using a duct of unrestricted length maintained at a temperature below 599°F (315°C). (Heating and possibly cooling capabilities as required); or

(ii) Using a smooth wall duct less than five feet long with no required heating (a maximum of two short flexible connectors are allowed under this option); or

(iii) Omitting the duct and performing the exhaust gas dilution function at the engine exhaust manifold or immediately after exhaust aftertreatment systems, or after a length of pipe representative of the vehicle exhaust pipe; or

(iv) Partial dilution of the exhaust gas prior to entering the dilution tunnel, which lowers the duct temperature below 599°F (315°C).

(5) Heated sample lines are required for the methanol and formaldehyde samples (care must be taken to prevent heating of the sample probes unless compensation for varying flow rate is made). The sample collection lines shall be heated to a temperature more than 5°F (3°C) above the maximum dew point of the mixture, but below 250°F (121°C).

* * * * *

(b) * * *

(1) *Exhaust dilution system.* The PDP–CVS shall conform to all of the requirements listed for the exhaust gas PDP–CVS in § 86.1309(b). The CFV–CVS shall conform to all of the requirements listed for the exhaust gas CFV–CVS in § 86.1309(c). The EFC–CFV–CVS shall conform to all of the requirements listed for the exhaust gas EFC–CVS in § 86.1309(d). In addition, the CFV–CVS and EFC–CFV–CVS must conform to the following requirements:

(i) The flow capacity of the CVS must be sufficient to maintain the diluted exhaust stream at or below the temperatures required for the measurement of particulate and hydrocarbon emission noted below and at, or above, the temperatures where condensation of water in the exhaust gases could occur. This may be achieved by either of the following two methods:

* * * * *

(ii) For the CFV–CVS or EFC–CFV–CVS, either a heat exchanger or electronic flow compensation (which also includes the particulate sample flows) is required (see Figure N90–6).

(iii) For the CFV–CVS or EFC–CFV–CVS when a heat exchanger is used, the gas mixture temperature, measured at a point immediately ahead of the critical flow venturi, shall be within ±20°F (±11°C) of the average operating temperature observed during the test with the simultaneous requirement that condensation does not occur. The temperature measuring system(sensors and readout) shall have an accuracy and precision of ±3.4°F (1.9°C). For systems utilizing a flow compensator to maintain proportional sampling, the

requirement for maintaining constant temperature is not necessary.

* * * * *

61. Section 86.1313–94 of Subpart N is amended by revising paragraph (d) to read as follows:

§ 86.1313–94 Fuel Specifications.

* * * * *

(d) *Mixtures of petroleum and methanol fuels for flexible fuel vehicles.* (1) Mixtures of petroleum and methanol fuels used for exhaust emission testing and service accumulation for flexible fuel vehicles shall consist of the methanol and petroleum fuels listed in paragraph (a) or (b) of this section, and shall be within the range of fuel mixtures for which the vehicle was designed, as reported in accordance with § 86.94–21. The Administrator may use any fuel mixture within this range for testing.

(2) The fuel mixtures used by the manufacturers shall be sufficient to demonstrate compliance over the full design range, and shall include:

(i) For emission testing:

(A) A petroleum fuel specified in paragraph (a) or paragraph (b) of this section;

(B) A methanol fuel representative of the methanol fuel expected to the found in use.

(ii) For service accumulation, an alternating combination of the fuels specified in paragraphs (a) or (b), and (c) of this section that, based on good engineering judgement, demonstrates the durability of the emissions control system. The combination shall be selected such that the cumulative volumes of both the methanol fuel and the petroleum fuel used shall be at least 25 percent of the total fuel volume. The fuels shall be or alternated at intervals not to exceed 500 hours.

(iii) Or, other combinations for testing and/or service accumulation which demonstrate compliance with the standards over the entire design range of the vehicle, provided that written approval is obtained from the Administrator prior to the start of testing.

(3) The specification range of the fuels to be used under this paragraph (d) shall be reported in accordance with § 86.094–21.

62. Section 86.1314–94 of Subpart N is amended by revising paragraphs (b), (e), (g)(2) and (g)(3), and adding paragraph (g)(4) to read as follows:

§ 86.1314–94 Analytical gases.

* * * * *

(b) Gases for the hydrocarbon analyzer shall be:

(1) Single blends of propane using air as the diluent; and

(2) Optionally, for response factor determination, single blends of methanol using air as the diluent.

* * * * *

(e) Fuel for FIDs and HFIDs and methane analyzers shall be a blend of 40 ±2 percent hydrogen with the balance being helium. The mixture shall contain less than 1 ppm equivalent carbon response. 98 to 100 percent hydrogen fuel may be used with advance approval by the Administrator.

* * * * *

(g) * * *

(2) Calibration gases (not including methanol) shall be traceable to within one percent of NIST (formerly NBS) gas standards, or other gas standards which have been approved by the Administrator.

(3) Span gases (not including methanol) shall be accurate to within two percent of true concentration, where true concentration refers to NIST (formerly NBS) gas standards, or other gas standards which have been approved by the Administrator.

(4) Methanol in air gases used for response factor determination shall:

(i) Be traceable to within ±2 percent of NIST (formerly NBS) gas standards, or other standards which have been approved by the Administrator; and

(ii) Remain within ±2 percent of the labeled concentration. Demonstration of stability shall be based on a quarterly measurement procedure with a precision of ±2 percent (two standard deviations), or other method approved by the Administrator. The measurement procedure may incorporate multiple measurements. If the true concentration of the gas changes by more than two percent, but less than ten percent, the gas may be relabeled with the new concentration.

* * * * *

63. Section 86.1316–94 of Subpart N is amended by revising paragraph (b)(1) to read as follows:

§ 86.1316–94 Calibrations; frequency and overview.

(b) * * *

(1) Calibrate the hydrocarbon analyzer, methane analyzer, carbon dioxide analyzer, carbon monoxide analyzer, and oxides of nitrogen analyzer (certain analyzers may require more frequent calibration depending on particular equipment and uses).

* * * * *

64. Section 86.1319–90 of Subpart N is amended by revising paragraphs (e)(1), (e)(4), and (e)(7), and adding paragraph (e)(8) to read as follows:

§ 86.1319–90 CVS calibration.

* * * * *

(e) * * *

(1) Obtain a small cylinder that has been charged with pure propane or carbon monoxide gas (CAUTION—carbon monoxide is poisonous).

* * * * *

(4) Following completion of step (3) above (if methanol injection is required), continue to operate the CVS in the normal manner and release a known quantity of pure methanol (in gaseous form) into the system during the sampling period (approximately five minutes). This step does not need to be performed with each verification, provided that it is performed at least twice annually.

* * * * *

(7) The cause for any discrepancy greater than ±2 percent must be found and corrected. (For 1991–1995 calendar years, discrepancies greater than ±2 percent are allowed for the methanol test, provided that they do not exceed ±6 percent.)

(8) The Administrator, upon request, may waive the requirement to comply with ±2 percent methanol recovery tolerance, and instead require compliance with a higher tolerance (not to exceed ±6 percent), provided that:

(i) The Administrator determines that compliance with these specified tolerances is not practically feasible; and

(ii) The manufacturer makes information available to the Administrator which indicates that the calibration tests and their results are consistent with good laboratory practice, and that the results are consistent with the results of calibration testing conducted by the Administrator.

65. Section 86.1321–94 of Subpart N is amended by revising paragraphs (a)(3)(ii), (a)(3)(iii), (c) introductory text, (c)(1), and (c)(3)(iii), and adding Figure N94–10 at the end of paragraph (c)(1), and adding paragraph (a)(3)(iv) to read as follows:

§ 86.1321–94 Hydrocarbon analyzer calibration.

* * * * *

(a) * * *

(3) * * *

(ii) The procedure listed in subpart D of this part, which is:

(A) If necessary, follow manufacturer's instructions for instrument start-up and basic operating adjustments.

(B) Set the oven temperature 5°C hotter than the required sample-line temperature. Allow at least one-half hour after the oven has reached

temperature for the system to equilibrate.

(C) Initial fuel flow adjustment. With the fuel and air-flow rates set at the manufacturer's recommendations, introduce a 350 ppmC ±75 ppmC span gas to the detector. Determine the response at a given fuel flow from the difference between the span-gas response and the zero-gas response. Incrementally adjust the fuel flow above and below the manufacturer's specification. Record and plot the span and zero response at these fuel flows. Adjust the fuel-flow rate to the rich side of the curve. This is initial flow-rate setting and may not be the final optimized flow rate.

(D) [Reserved]

(E) Linearity check. For each range used, check linearity as follows:

(*1*) Zero the analyzer.

(*2*) Span the analyzer using a calibration gas that will provide a response of approximately 90 percent of full-scale concentration.

(*3*) Recheck the zero response. If it has changed more than 0.5 percent of full scale, repeat the steps in paragraphs (a)(3)(ii)(E) (*1*) and (*2*) of this section.

(*4*) Record the response of calibration gases having nominal concentrations of 30, 60, and 90 percent of full-scale concentration. It is permitted to use additional concentrations.

(*5*) Perform a linear least square regression on the data generated. Use an equation of the form y=mx, where x is the actual chart deflection and y is the concentration.

(*6*) Use the equation z=y/m to find the linear chart deflection (z) for each calibration gas concentration (y).

(*7*) Determine the linearity (%L) for each calibration gas by:

$$\text{Percent L} = \frac{(z - x)}{\text{Full-scale linear chart deflection}} \times 100$$

(*8*) The linearity criterion is met if the %L is less than ±2 percent for each data point generated. Below 40 ppmC the linearity criterion may be expanded to ±4 percent. For each emission test, a calibration curve of the form y=mx is to be used. The slope (m) is defined for each range by the spanning process.

(*9*) If the %L for any point exceeds the specifications of the step in paragraph (a)(3)(ii)(E)(*8*) of this section, the air, fuel, and sample-flow rates may be varied.

(*10*) If the %L for any data point still exceeds the specifications, repair or replace the analyzer, FID fuel, burner air, or calibration bottles prior to testing. Repeat the procedures of this section with the repaired or replaced equipment or gases.

(F) Optimized flow rates. The fuel-flow rate, air-flow rate and sample-flow rate are defined as ''optimized'' at this point.

(iii) The procedures specified by the manufacturer of the FID or HFID.

(iv) Alternative procedures may be used if approved in advance by the Administrator.

* * * * *

(c) *FID response factor to methanol.* When the FID analyzer is to be used for the analysis of hydrocarbon samples containing methanol, the methanol response factor of the analyzer shall be established. The methanol response factor shall be determined at several concentrations in the range of concentrations in the exhaust sample, using either bag samples or gas bottles meeting the requirements of § 86.1314.

(1) The bag sample of methanol for analysis in the FID, if used, shall be prepared using the apparatus shown in Figure N94–10. A known volume of methanol is injected, using a microliter syringe, into the heated mixing zone (250°F (121°C)) of the apparatus. The methanol is vaporized and swept into the sample bag with a known volume of zero grade air measured by a gas flow meter meeting the specifications of § 86.1320.

BILLING CODE 6560–50–P

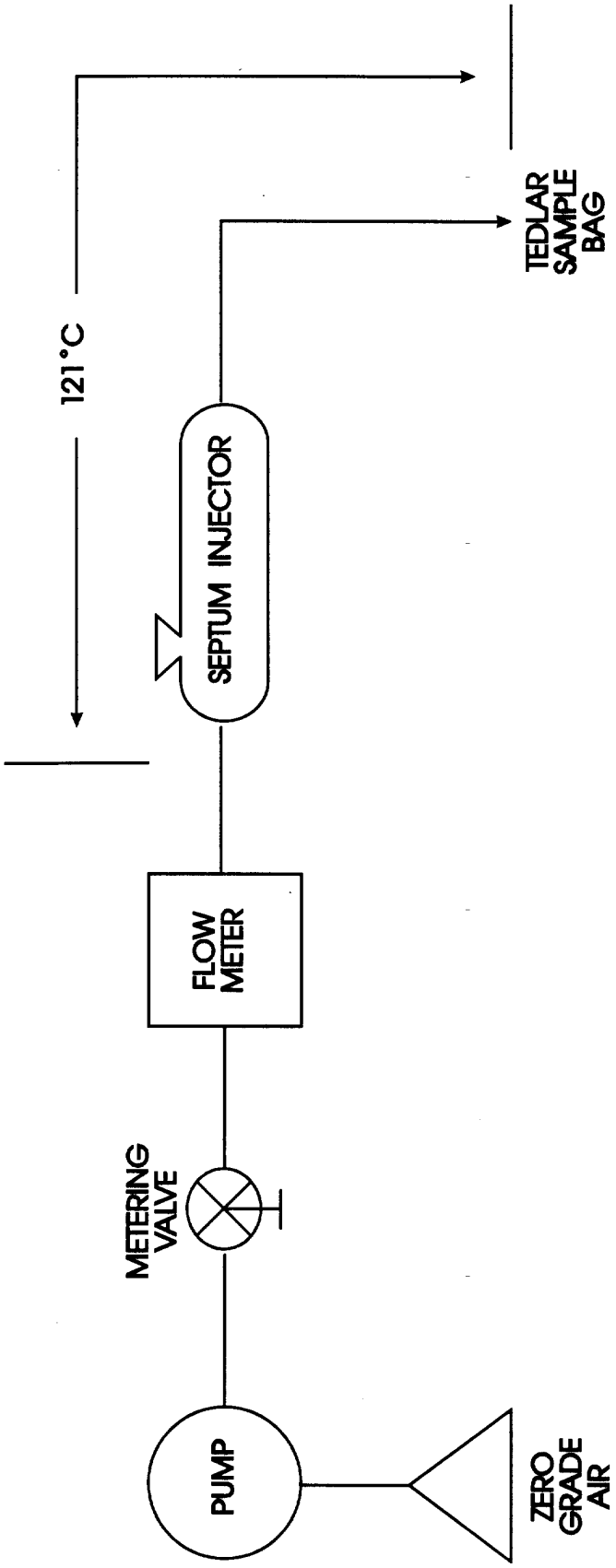

FIGURE N94-10 APPARATUS FOR PREPARATION OF FID METHANOL RESPONSE CALIBRATION MIX

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* * * * *

(3) * * *

(iii) SAMppm=methanol concentration in the sample bag, or gas bottle, in ppmC. SAMppm for sample bags:

$$= \frac{0.02406 \times \text{Fuel injected} \times \text{Fuel density}}{\text{Air volume} \times \text{Mol. Wt. } CH_3OH}$$

Where:

* * * * *

66. Section 86.1323–84 of Subpart N is amended by adding paragraph (d) to read as follows:

§ 86.1323–84 Oxides of nitrogen analyzer calibration.

* * * * *

(d) When testing methanol-fueled engines it may be necessary to clean the analyzer frequently to prevent interference with NO_X measurements (see EPA/60/S3–88/040).

67. Section 86.1327–90 of Subpart N is amended by revising paragraph (a) to read as follows:

§ 86.1327–90 Engine dynamometer test procedures; overview.

(a) The engine dynamometer test procedure is designed to determine the brake specific emissions of hydrocarbons, nonmethane hydrocarbons carbon monoxide, oxides of nitrogen, particulate, methanol and formaldehyde, as applicable. The test procedure consists of a ''cold'' start test following either natural or forced cool-down periods described in §§ 86.1334 and 86.1335, respectively. A ''hot'' start test follows the ''cold'' start test after a hot soak of 20 minutes. The idle test of subpart P of this part may be run after the ''hot'' start test. The exhaust emissions are diluted with ambient air and a continuous proportional sample is collected for analysis during both the cold- and hot-start tests. The composite samples collected are analyzed either in bags or continuously for hydrocarbons (HC), methane (CH_4—as applicable), carbon monoxide (CO), carbon dioxide (CO_2), and oxides of nitrogen (NO_X), or in sample collection impingers for methanol (CH_3OH) and sample collection impingers (or cartridges) for formaldehyde (HCHO). Measurement of CH_3OH and HCHO may be omitted for 1990 through 1994 model year methanol-fueled engines when a FID calibrated on methanol is used. A bag or continuous sample of the dilution air is similarly analyzed for background levels of hydrocarbon, carbon monoxide, carbon dioxide, and oxides of nitrogen and, if appropriate, methane and/or methanol and/or formaldehyde. In addition, for diesel-cycle engines, particulates are collected on fluorocarbon-coated glass fiber filters or fluorocarbon-based (membrane) filters, and the dilution air may be prefiltered.

* * * * *

69. Section 86.1327–96 of Subpart N is amended by revising paragraph (a) to read as follows:

§ 86.1327–96 Engine dynamometer test procedures; overview.

(a) The engine dynamometer test procedure is designed to determine the brake specific emissions of hydrocarbons, nonmethane hydrocarbons, carbon monoxide, oxides of nitrogen, particulate, methanol and formaldehyde, as applicable. The test procedure consists of a ''cold'' start test following either natural or forced cool-down periods described in §§ 86.1334 and 86.1335, respectively. A ''hot'' start test follows the ''cold'' start test after a hot soak of 20 minutes. The idle test of subpart P of this part may be run after the ''hot'' start test. The exhaust emissions are diluted with ambient air and a continuous proportional sample is collected for analysis during both the cold- and hot-start tests. The composite samples collected are analyzed either in bags or continuously for hydrocarbons (HC), methane (CH_4) carbon monoxide (CO), carbon dioxide (CO_2), and oxides of nitrogen (NO_X), or in sample collection impingers for methanol (CH_3OH) and sample collection impingers (or cartridges) for formaldehyde (HCHO), as applicable. Measurement of CH_3OH and HCHO may be omitted for 1990 through 1994 model year methanol-fueled engines when a FID calibrated on methanol is used. A bag or continuous sample of the dilution air is similarly analyzed for background levels of hydrocarbon, carbon monoxide, carbon dioxide, and oxides of nitrogen and, if appropriate, methane and/or methanol and/or formaldehyde. In addition, for diesel-cycle engines, particulates are collected on fluorocarbon-coated glass fiber filters or fluorocarbon-based (membrane) filters, and the dilution air may be prefiltered.

* * * * *

69. Section 86.1330–90 of Subpart N is amended by revising paragraphs (b)(1) and (c) to read as follows:

§ 86.1330–90 Test sequence; general requirements.

* * * * *

(b) * * * (1) The temperature of the CVS dilution air shall be maintained at greater than 68°F (20°C) throughout the test sequence, except as permitted by § 86.1335–90. Heating of the dilution air above 86°F is allowed provided:

(i) The air (or air plus exhaust gas) temperature does not exceed 250°F, or 125°F if particulate emissions are measured.

(ii) Calculation of the CVS flow rate necessary to prevent water condensation is based on the lowest temperature encountered in the CVS prior to sampling. (It is recommended that the CVS system be insulation when heated dilution air is used.)

(iii) The dilution ratio is sufficiently high to prevent condensation in bag samples as they cool to room temperature.

* * * * *

(c) No control of ambient air, engine intake or CVS dilution air humidity is required (dehumidification of the dilution air prior to entering the CVS is allowed).

* * * * *

70. Section 86.1337–90 of Subpart N is amended by revising paragraphs (a)(3), (a)(13) and (a)(26) to read as follows:

§ 86.1337–90 Engine dynamometer test run.

(a) * * *

(3) For methanol-fueled vehicles, install fresh methanol and formaldehyde impingers (or cartridges) in the exhaust and dilution air sample systems for methanol and formaldehyde. A single dilution air sample covering the total test period may be utilized for methanol and formaldehyde background. (Background measurements of methanol and formaldehyde may be omitted and concentrations assumed to be zero for calculations in § 86.1344.)

* * * * *

(13) Immediately after the engine is turned off, turn off the engine cooling fan(s) if used, and the CVS blower (or disconnect the exhaust system from the CVS). As soon as possible, transfer the ''cold start cycle'' exhaust and dilution air bag samples to the analytical system and process the samples according to § 86.1340. A stabilized reading of the exhaust sample on all analyzers shall be obtained within 20 minutes of the end of the sample collection phase of the test. Analysis of the methanol and formaldehyde samples shall be obtained within 24 hours of the end of the sample collection period. (If it is not possible to perform the analysis within 24 hours, the samples should be stored in a cold (4–10 °C) dark environment until analysis can be performed. The samples should be analyzed within fourteen days.) For diesel engines tested for particulate, carefully remove the filter holder from the sample flow apparatus,

and remove each particulate sample filter from its holder and place each in a petri dish and cover.

* * * * *

(26) As soon as possible, transfer the ''hot start cycle'' exhaust and dilution air bag samples to the analytical system and process the samples according to § 86.1340. A stabilized reading of the exhaust sample on all analyzers shall be obtained within 20 minutes of the end of the sample collection phase of the test. Analysis of the methanol and formaldehyde samples shall be obtained within 24 hours of the end of the sample collection period. (If it is not possible to perform them within 24 hours, the samples should be stored in a cold (approximately 4–10 °C) dark environment until analysis can be performed.) For diesel engines tested for particulate, carefully remove the assembled filter holder from the sample flow lines and remove each particulate sample filter from its holder and place each in a petri dish and cover as soon as possible. Within one hour after the end of the hot start phase of the test, transfer the four particulate filters to the weighing chamber for post-test conditioning.

* * * * *

71. Section 86.1337–96 of Subpart N is amended by revising paragraphs (a)(3), (a)(13) and (a)(26) to read as follows:

§ 86.1337–96 Engine dynamometer test run.

(a) * * *

(3) For methanol-fueled vehicles, install fresh methanol and formaldehyde impingers (or cartridges) in the exhaust and dilution air sample systems for methanol and formaldehyde. A single dilution air sample covering the total test period may be utilized for methanol and formaldehyde background. (Background measurements of methanol and formaldehyde may be omitted and concentrations assumed to be zero for calculations in § 86.1344.)

* * * * *

(13) Immediately after the engine is turned off, turn off the engine cooling fan(s) if used, and the CVS blower (or disconnect the exhaust system from the CVS). As soon as possible, transfer the ''cold start cycle'' exhaust and dilution air bag samples to the analytical system and process the samples according to § 86.1340. A stabilized reading of the exhaust sample on all analyzers shall be obtained within 20 minutes of the end of the sample collection phase of the test. Analysis of the methanol and formaldehyde samples shall be obtained within 24 hours of the end of the sample collection period. (If it is not possible to perform the analysis within 24 hours, the samples should be stored in a cold (4–10 °C) dark environment until analysis can be performed. The samples should be analyzed within 14 days.) For diesel engines tested for particulate, carefully remove the filter holder from the sample flow apparatus, and remove each particulate sample filter from its holder and place each in a petri dish and cover.

* * * * *

(26) As soon as possible, transfer the ''hot start cycle'' exhaust and dilution air bag samples to the analytical system and process the samples according to § 86.1340. A stabilized reading of the exhaust sample on all analyzers shall be obtained within 20 minutes of the end of the sample collection phase of the test. Analysis of the methanol and formaldehyde samples shall be obtained within 24 hours of the end of the sample collection period. (If it is not possible to perform them within 24 hours, the samples should be stored in a cold (approximately 4–10 °C) dark environment until analysis can be performed.) For diesel engines tested for particulate, carefully remove the assembled filter holder from the sample flow lines and remove each particulate sample filter from its holder and place each in a petri dish and cover as soon as possible. Within 1 hour after the end of the hot start phase of the test, transfer the four particulate filters to the weighing chamber for post-test conditioning.

* * * * *

72. Section 86.1340–90 of Subpart N is amended by revising paragraphs (g) and (h) to read as follows:

§ 86.1340–90 Exhaust sample analysis.

* * * * *

(g) For CH_3OH (where applicable), introduce test samples into the gas chromatograph and measure the concentration. This concentration is C_{MS} in the calculations.

(h) For HCHO (where applicable), introduce test samples into the high pressure liquid chromatograph and measure the concentration of formaldehyde as a dinitrophenylhydrazine derivative in acetonitrile. This concentration is C_{FS} in the calculations.

73. Section 86.1340–94 of Subpart N is amended by removing paragraphs (d)(8) through (h)(2) and adding paragraphs (d)(8) through (h) to read as follows:

§ 86.1340–94 Exhaust sample analysis.

* * * * *

(d)(8) through (h) [Reserved]. For guidance see § 86.1340–90.

74. Section 86.1342–94 of Subpart N is amended by revising paragraphs (a)(1), (d)(3)(vi) through (d)(7)(ii), and (d)(8)(ii) to read as follows:

§ 86.1342–94 Calculations; exhaust emissions.

* * * * *

(a) * * *

(1) A_{WM}=Weighted mass emission level (HC, CO, CO_2, or NO_X) in grams per brake horsepower-hour and, if appropriate, the weighted mass total hydrocarbon equivalent, formaldehyde, or non-methane hydrocarbon emission level in grams per brake horsepower-hour.

* * * * *

(d) * * *

(d)(3)(vi) through (d)(5)(iii)(B) [Reserved]. For guidance see § 86.1342–90.

(d)(5)(iv)(A) C_{CH3OHe}=Methanol concentration in the dilute exhaust, in ppm.

(B)

$$C_{CH3OHe} = \frac{3.813\times10^{-2}\times T_{EM}\left[\left(C_{S1}\times AV_{S1}\right)+\left(C_{S2}\times AV_{S2}\right)\right]}{P_B\times V_{EM}}$$

(v)(A) C_{CH3OHd}=Methanol concentration in the dilution air, in ppm

(B)

$$C_{CH3OHd} = \frac{3.813\times10^{-2}\times T_{DM}\left[\left(C_{D1}\times AV_{D1}\right)+\left(C_{D2}\times AV_{D2}\right)\right]}{P_B\times V_{DM`}}$$

(vi) T_{EM}=Temperature of methanol sample withdrawn from dilute exhaust, °R
(vii) T_{DM}=Temperature of methanol sample withdrawn from dilution air, °R
(viii) P_B=Barometric pressure during test, mm Hg.
(ix) V_{EM}=Volume of methanol sample withdrawn from dilute exhaust, ft^3
(x) V_{DM}=Volume of methanol sample withdrawn from dilution air, ft^3
(xi) C_S=GC concentration of sample drawn from dilute exhaust
(xii) C_D=GC concentration of sample drawn from dilution air
(xiii) AV_S=Volume of absorbing reagent (deionized water) in impinger through which methanol sample from dilute exhaust is drawn, ml
(xiv) AV_D=Volume of absorbing reagent (deionized water) in impinger through which methanol sample from dilution air is drawn, ml
(xv) 1=first impinger.
(xvi) 2=second impinger.

(d)(6)(i) through (d)(7)(i) [Reserved]. For guidance see § 86.1342–90.

(d)(7)(ii) For methanol-fueled vehicles, where fuel composition is $C_xH_yO_z$ as measured, or calculated, for the fuel used:

$$DF = \frac{\dfrac{x}{(100)x + y/2 = 3.76\left(x + y/2 - z/2\right)}}{CO_{2e} + \left(HC_e + CO_e + CH_3OH_e + HCHO_e\right)}$$

(d)(8)(i) * * *

(d)(8)(ii) For Otto-cycle engines: K_H=1/[1–0.0047(H–75)] (or for SI units, K_H=1/[1–0.0329(H–10.71)]).

* * * * *

75. Section 86.1344–94 of Subpart N is amended by revising paragraphs (e)(18) introductory text, (e)(18)(ii) through (e)(18)(vi), and removing paragraph (e)(18)(vii), to read as follows:

§ 86.1344–94 Required information.

* * * * *

(e) * * *

(18) For engines requiring methanol and/or formaldehyde measurement (as applicable):

* * * * *

(ii) The methanol concentration of the GC analyses of the test samples, µg/ml.

(iii) Volume of sample passed through the formaldehyde sampling system.

(iv) The formaldehyde concentration of the LC analysis of the test sample, µg/ml.

(v) Specification of the methanol test fuel, or fuel mixtures, used during testing.

(vi) A continuous measurement of the dew point of the raw and diluted exhaust. This requirement may be omitted if the temperatures of all heated lines are kept above 220°F, or if the manufacturer performs an engineering analysis demonstrating that the temperature of the heated systems remains above the maximum dew point of the gas stream throughout the course of the test.

* * * * *

76. The heading of subpart P is revised to read as follows:

Subpart P—Emission Regulations for Otto-Cycle Heavy-Duty Engines, New Methanol-Fueled Natural Gas-Fueled, and Liquefied Petroleum Gas-Fueled Diesel-Cycle Heavy-Duty Engines, New Otto-Cycle Light-Duty Trucks, and New Methanol-Fueled Natural Gas-Fueled, and Liquefied Petroleum Gas-Fueled Diesel-Cycle Light-Duty Trucks; Idle Test Procedures

77. Section 86.1501–94 of Subpart P is revised to read as follows:

§ 86.1501–94 Scope; applicability.

This subpart contains gaseous emission idle test procedures for light-duty trucks and heavy-duty engines for which idle CO standards apply. It applies to 1994 and later model years. The idle test procedures are optionally applicable to 1994 through 1996 model year natural gas-fueled and liquefied petroleum gas-fueled light-duty trucks and heavy-duty engines.

78. Section 86.1504–94 of Subpart P is amended by revising paragraph (c) to read as follows:

§ 86.1504–94 Section numbering; construction.

* * * * *

(c) All provisions in this subpart apply to gasoline-fueled and methanol-fueled Otto-cycle heavy-duty engines, methanol-fueled Diesel-cycle heavy-duty engines, new Otto-cycle light-duty trucks, and liquefied petroleum gas-fueled, natural gas-fueled, and methanol-fueled diesel-cycle light-duty trucks.

79. Section 86.1505–94 of Subpart P is amended by revising paragraph (a) to read as follows:

§ 86.1505–94 Introduction; structure of subpart.

(a) This subpart describes the equipment and the procedures required to perform idle exhaust emission tests on heavy-duty engines and light-duty trucks. Subpart A of this part sets forth the testing requirements, reporting requirements and test intervals necessary to comply with EPA certification procedures.

* * * * *

80. Section 86.1509–84 of Subpart P is amended by revising paragraph (c) to read as follows:

§ 86.1509–84 Exhaust gas sampling system.

* * * * *

(c) A CVS sampling system with bag analysis as specified in § 86.1309 or § 86.109 or with continuous analysis as specified in § 86.1310 is permitted as applicable. The inclusion of an additional raw carbon dioxide (CO_2) analyzer as specified in §§ 86.309–79 and 86.316–79 is required if the CVS system is used, in order to accurately determine the CVS dilution factor. The heated sample line specified in § 86.309–79 and § 86.310–79 for raw emission requirements is not required for the raw CO_2 measurement.

* * * * *

81. Section 86.1511–84 of Subpart P is amended by revising paragraphs (a)(1) and (a)(8)(iii) to read as follows:

§ 86.1511–84 Exhaust gas analysis system.

(a) * * *

(1) The analyzer used shall conform to the emission measurement accuracy provisions of § 86.1338.

* * * * *

(8) * * *

(iii) During variations of ±50 percent of nominal sample flow.

* * * * *

82. Section 1514–84 of Subpart P is amended by adding paragraph (c) to read as follows:

§ 86.1514–84 Analytical gases.

* * * * *

(c) If a CVS sampling system is used, the analytical gases specified in § 86.1314 shall be used.

83. Section 86.1537–84 of Subpart P is amended by revising paragraphs (d), (e)(1), (e)(2), and (e)(5) through (e)(7) to read as follows:

§ 86.1537–84 Idle test run.

* * * * *

(d) Operate the warm engine at 2500 ±50 rpm, or rated torque speed for diesel-cycle engines, and zero load for a minimum of 30 seconds and a maximum of 6 minutes.

(e) * * *

(1) If bag samples are drawn, with the sample selector valves in the standby position connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(2) Start the CVS (if not already on), the sample pumps, integrators, and the raw CO_2 analyzer, as applicable. (The heat exchanger of the constant volume sampler, if used, shall be running at operating temperature before sampling begins.)

* * * * *

(5) Begin raw and dilute sampling.

(6) For bag sampling, sample idle emissions long enough to obtain a sufficient bag sample, but in no case shorter than 60 seconds nor longer than 6 minutes. Follow the sampling and exhaust measurements requirements of § 86.340–79(e) for the conducting of the raw CO_2 measurement.

(7) As soon as possible, transfer the idle test exhaust and dilution air samples to the analytical system and process the samples according to § 86.1540–84. Obtain a stabilized reading of the exhaust sample on all analyzers within 20 minutes of the end of the sample collection phase of the test.

* * * * *

84. In Part 86, all references to ''OMHCE'' are revised to read ''THCE'', all references to ''Organic Material Hydrocarbon Equivalent'' are revised to read ''Total Hydrocarbon Equivalent'', all references to ''Organic material hydrocarbon equivalent'' are revised to read ''Total hydrocarbon equivalent'', all references to ''organic material hydrocarbon equivalent'' are revised to read ''total hydrocarbon equivalent'', all references to ''OMNMHCE'' are revised to read ''NMHCE'' , all references to ''Organic Material Non-Methane Hydrocarbon Equivalent'' are revised to read ''Non-Methane Hydrocarbon Equivalent'', all references to ''Organic material non-methane hydrocarbon equivalent'' are revised to read ''Non-methane hydrocarbon equivalent'', all references to ''organic material non-methane hydrocarbon equivalent'' are revised to read ''non-methane hydrocarbon equivalent''.

[FR Doc. 95–14220 Filed 6–29–95; 8:45 am]

BILLING CODE 6560–50–P

Friday
June 30, 1995

Part III

Nuclear Regulatory Commission

10 CFR Part 2

Enforcement Actions Policy and Procedure: Final Rule and Notice

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Policy and Procedure for Enforcement Actions; Removal

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The Nuclear Regulatory Commission (NRC) is removing its General Statement of Policy and Procedure for Enforcement Actions (Enforcement Policy) from the Code of Federal Regulations because the Enforcement Policy is not a regulation.

DATES: This action is effective on June 30, 1995.

Submit comments on or before August 14, 1995. Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301) 415–2741.

SUPPLEMENTARY INFORMATION: On May 13, 1994, the NRC's Executive Director for Operations established a review team to assess the NRC enforcement program. The review team report, NUREG–1525, [1] ''Assessment of the NRC Enforcement Program,'' was published in April 1995. The team report, in Recommendation II. G–3, recommended that the Enforcement Policy be removed from the Code of Federal Regulations (CFR) because the Enforcement Policy is not a regulation.

The NRC Enforcement Policy has been codified at 10 CFR Part 2, Appendix C to provide widespread dissemination of the Commission's Enforcement Policy. However, after the Commission first published the Enforcement Policy on October 7, 1980 (45 FR 66754), the Commission has maintained that the NRC Enforcement Policy is a policy statement and not a regulation. The Commission's reason for having a policy statement rather than a rule was explained in the Statement of Considerations that accompanied the publication of the 1982 Enforcement Policy. The Commission stated then:

> An underlying basis of this policy that is reflected throughout it is that the determination of the appropriate sanction requires the exercise of discretion such that each enforcement action is tailored to the particular factual situation. In view of the discretion provided, the enforcement policy is being adopted as a statement of general policy rather than as a regulation, notwithstanding that the statement has been promulgated with notice and comment procedures. A general statement of policy will permit the Commission maximum flexibility in revising the policy statement and it is expected that the statement, especially the supplement, will be revised as necessary to reflect changes in policy and direction of the Commission (47 FR 9989; March 9, 1992).

For the same reasons, the Commission continues to hold the view that the Enforcement Policy is a policy statement. However, at least one court, in considering whether an enforcement policy was a policy statement or a regulation, noted that if the policy were published in the CFR, it would be properly treated as a regulation because the CFR is reserved for documents ''having general applicability and legal effect.'' (Brock v. Cathedral Bluffs Shale Oil Co., 796 F.2d 533, 539 (D.C. Cir. 1986) *citing* 44 U.S.C. 1510 (1982)).

Therefore, because the Enforcement Policy is not a regulation, the Commission is removing it from the Code of Federal Regulations. Revisions of the Enforcement Policy will continue to be published in the **Federal Register**.

To ensure widespread dissemination, the Enforcement Policy will be provided to licensees, made available on an electronic bulletin board, and published as NUREG–1600, ''General Statement of Policy and Procedure for NRC Enforcement Actions.''

Paperwork Reduction Act Statement

This policy statement contains no information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

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

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841)* * *.

Appendix C to Part 2 [Removed]

2. Appendix C to Part 2 is removed.

Dated at Rockville, MD, this 23rd day of June, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–15951 Filed 6–29–95; 8:45 am]

BILLING CODE 7590–01–P

[1] Copies of NUREG–1525 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

NUCLEAR REGULATORY COMMISSION

Revision of the NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: As a result of an assessment of the Nuclear Regulatory Commission's (NRC) enforcement program, the NRC has revised its General Statement of Policy and Procedure for Enforcement Actions (Enforcement Policy or Policy). By a separate action published today in the **Federal Register**, the Commission is removing the Enforcement Policy from the Code of Federal Regulations.

DATES: This action is effective on June 30, 1995, while comments are being received. Submit comments on or before August 14, 1995. Additionally, the Commission intends to provide an opportunity for public comments after this revised Enforcement Policy has been in effect for about 18 months.

ADDRESSES: Send written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–2741.

SUPPLEMENTARY INFORMATION: On May 13, 1994, the NRC's Executive Director for Operations established a review team to assess the NRC enforcement program. In its report (NUREG–1525,[1] ''Assessment of the NRC Enforcement Program,'' April 5, 1995), the review team concluded that the existing NRC enforcement program, as implemented, is appropriately directed toward supporting the agency's overall safety mission. This conclusion is reflected in several aspects of the program:

- The Policy recognizes that violations have differing degrees of safety significance. As reflected in the severity levels, safety significance includes actual safety consequence, potential safety consequence, and regulatory significance. The use of graduated sanctions from Notices of Violation to orders further reflects the varying seriousness of noncompliances.
- The enforcement conference is an important step in achieving a mutual understanding of facts and issues before making significant enforcement decisions. Although these conferences take time and effort for both the NRC and licensees, they generally contribute to better decision-making.
- Enforcement actions deliver regulatory messages properly focused on safety. These messages emphasize the need for licensees to identify and correct violations, to address the root causes, and to be responsive to initial opportunities to identify and prevent violations.
- The use of discretion and judgment throughout the deliberative process recognizes that enforcement of NRC requirements does not lend itself to mechanistic treatment.

However, the Review Team found that the existing enforcement program at times provided mixed regulatory messages to licensees, and room for improvement existed in the Enforcement Policy. The review suggested that the program's focus should be clarified to:

- Emphasize the importance of identifying problems before events occur, and of taking prompt, comprehensive corrective action when problems are identified;
- Direct agency attention at licensees with multiple enforcement actions in a relatively short period; and
- Focus on current performance of licensees.

In addition, the review team found that the process for assessing civil penalties could be simplified to improve the predictability of decision-making and obtain better consistency between regions.

As a result of its review, the review team made several recommendations to revise the NRC Enforcement Policy to produce an enforcement program with clearer regulatory focus and more predictability. The Commission is issuing this policy statement after considering those recommendations and the bases for them in NUREG–1525.

The more significant changes to the current Enforcement Policy are described below:

I. Introduction and Purpose

This section has been modified to emphasize that the purpose and objectives of the enforcement program are focused on using enforcement actions:

(1) As a deterrent to emphasize the importance of compliance with requirements; and

(2) To encourage prompt identification and prompt, comprehensive correction of violations.

IV. Severity of Violations

Severity Level V violations have been eliminated. The examples at that level have been withdrawn from the supplements. Formal enforcement actions will now only be taken for violations categorized at Severity Level I to IV to better focus the inspection and enforcement process on safety. To the extent that minor violations are described in an inspection report, they will be labeled as Non-Cited Violations (NCVs). When a licensee does not take corrective action or repeatedly or willfully commits a minor violation such that a formal response would be needed, the violation should be categorized at least at a Severity Level IV.

The NRC staff will be reviewing the severity level examples in the supplements over the next 6 months. The purpose of this review is to ensure the examples are appropriately focused on safety significance, including consideration of actual safety consequence, potential safety consequence, and regulatory significance.

V. Predecisional Enforcement Conferences

Enforcement conferences are being renamed ''predecisional enforcement conferences.'' These conferences should be held for the purpose of obtaining information to assist NRC in making enforcement decisions when the agency reasonably expects that escalated enforcement actions will result. They should also normally be held if requested by a licensee. In addition they should normally be held before issuing an order or a civil penalty to an unlicensed individual.

In light of the changes to the Enforcement Policy, the Commission has decided to continue a trial program of conducting approximately 25 percent of eligible conferences open to public observation pending further evaluation. (See 57 FR 30762; July 10, 1992, and 59 FR 36796; July 19, 1994). The intent of open conferences is not to maximize public attendance, but is rather for determining whether providing the public with an opportunity to observe the regulatory process is compatible with the NRC's ability to exercise its regulatory and safety responsibilities. The provisions of the trial program have been incorporated into the Enforcement Policy.

[1] Copies of NUREG–1525 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

VI. Enforcement Actions

A. Notice of Violation

This section was modified to clarify that the NRC may waive all or portions of a licensee's written response to a Notice of Violation to the extent relevant information has already been provided to the NRC in writing or documented in an NRC inspection report and is on the applicable docket in the NRC Public Document Room.

B. Civil Penalty

1. Base Civil Penalty

Tables 1A and 1B have been revised. In Table 1B the percentage for Severity Level IV violations has been deleted since such violations will not be subject to civil penalties. If a violation that would otherwise be categorized at a Severity Level IV violation merits a civil penalty because of its significance, the violation would normally be categorized at a Severity Level III.

Table 1A has been simplified to combine categories of licensees with the same base penalty amounts. The base penalty amounts have generally remained unchanged. The revised policy notes that the base penalties may be adjusted on a case-by-case basis to reflect the ability to pay and the gravity of the violation. 10 CFR Part 35 licensees (doctors, nuclear pharmacies, and other medical related licensees) are combined into an overall medical category, based on the similarity of hazards. Because transportation violations for all licensees are primarily concerned with the potential for personnel exposure to radiation, the violations in this area will be treated the same as those in the health physics area.

The $100,000 base civil penalty amount for safeguards violations, which applies to only two categories of licensees, fuel fabricators and independent fuel and monitored retrievable storage installations, has been deleted. The penalty amount for safeguards should be the same as for other violations at these facilities. NRC has not had significant safeguards violations at these facilities. If the penalty that would normally be assessed for operational violations is not adequate to address the circumstances of the violation, then discretion would be used to determine the appropriate penalty amount.

The base civil penalty for ''other'' materials licensees, currently set at $1000, has been increased to $5000. The primary concerns for these licensed activities are individual radiation exposure and loss of control of material to the environment, both of which warrant a more financially meaningful penalty. A $500 civil penalty for a Severity Level III violation (at 50% of the Severity Level I base amount) does not reflect the seriousness of this type of violation for this category of licensee. It is noted that with the revised assessment approach, these licensees will not normally receive a civil penalty if prompt and comprehensive corrective action is taken for isolated non-willful Severity Level III violations.

2. Civil Penalty Assessment

This section has been renamed to reflect that the process for assessing civil penalties has been substantially changed. The revised process is intended to:

- Continue to emphasize compliance in a manner that deters future violations;
- Encourage prompt identification and prompt, comprehensive correction of violations and their root causes;
- Apply the recognition of good past performance to give credit to a licensee committing a non-willful SL III violation who has had no previous significant violations during the past 2 years or 2 inspections (whichever is longer);
- Place greater attention on situations of greater concern (i.e., where a licensee has had more than one significant violation in a 2-year or two-inspection period, where corrective action is less than prompt and comprehensive, or where egregious circumstances, such as where it is clear that repetitiveness or willfulness, are involved);
- Streamline the NRC decisional process in a manner that will preserve judgment and discretion, but will provide a clear normative standard and produce relatively predictable results for routine cases; and
- Provide clear guidance on applying fewer adjustment factors in various types of cases, in order to increase consistency and predictability.

Once a violation has been categorized at a Severity Level III or above, the assessment process considers four basic decisional points:

(1) Whether the licensee has had a previous escalated enforcement action during the past 2 years or past 2 inspections, whichever is longer;

(2) Whether the licensee should be given credit for actions related to identification;

(3) Whether the licensee's corrective actions may reasonably be considered prompt and comprehensive; and

(4) Whether, in view of all the circumstances, the case in question warrants the exercise of discretion. As described in the Enforcement Policy, each of these decisional points may have several associated considerations for any given case. However, the outcome of a case, absent the exercise of discretion, is limited to three results: no civil penalty, a base civil penalty, or a base civil penalty escalated by 100%.

D. Related Administrative Actions

The reference to related administrative mechanisms have been replaced with related administrative actions to clarify the documents as actions.

VII. Exercise of Discretion

The ability to exercise discretion is preserved with the revised policy. Discretion is provided to deviate from the normal approach to either increase or decrease sanctions where necessary to ensure that the sanction reflects the significance of the circumstances and conveys the appropriate regulatory message. This section has been modified to provide examples where it is appropriate to consider civil penalties or escalate civil penalties notwithstanding the normal assessment process in Section VI of the Enforcement Policy. One significant example to note involves the loss of a source. This example is being added to emphasize the importance of licensees being aware of the location of their sources and to recognize that there should not be an economic advantage for inappropriate disposal or transfer. As to mitigation of sanctions for violations involving special circumstances, mitigation can be considered if the licensee has demonstrated overall sustained performance which has been particularly good. The levels of approval for exercising discretion are described in this section. Finally, Table 2, ''Examples of Progressions of Escalated Enforcement Actions for Similar Violations in the Same Activity Area Under the Same License,'' has been withdrawn from the Enforcement Policy. The guidance in that table is not needed because the policy is clear that each case should be judged on its own merits, especially those repetitive violation cases to which the table applied.

VIII. Enforcement Actions Involving Individuals

The Enforcement Policy has been clarified to provide that some action is normally to be taken against a licensee for violations caused by significant acts of wrongdoing by its employees, contractors, or contractors employees. The Policy has also been modified to state that the nine factors in Section VIII

should be used to assist in the decision on whether enforcement action should be taken against an unlicensed individual as well as the licensee. The Policy currently uses these factors to determine whether to take enforcement action against an unlicensed person rather than the licensee. These changes are consistent with the intent of the Commission in promulgating the rule on deliberate misconduct (56 FR 40664, 40666, August 15, 1991). Less significant cases may be treated as an NCV under Section VII.B.1. A Letter of Reprimand is not a sanction and is now referred to as an administrative action consistent with Section VI.D of the Policy.

The Commission expects that the changes to the Enforcement Policy should result in an increase in the protection of the public health and safety by better emphasizing the prevention, detection, and correction of violations before events occur with impact on the public. In about 2 years the Commission intends to review the Enforcement Policy. In that regard, it is expected that in about 18 months an opportunity will be provided to receive public comments on the implementation of this Policy.

General Statement of Policy and Procedure for NRC Enforcement Actions

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Preface

The following statement of general policy and procedure explains the enforcement policy and procedures of the U.S. Nuclear Regulatory Commission (NRC or Commission) and the NRC staff (staff) in initiating enforcement actions, and of the presiding officers and the Commission in reviewing these actions. This statement is applicable to enforcement in matters involving the radiological health and safety of the public, including employees' health and safety, the common defense and security, and the environment.[1] This statement of general policy and procedure will be published as NUREG–1600 to provide widespread dissemination of the Commission's Enforcement Policy. However, this is a policy statement and not a regulation. The Commission may deviate from this statement of policy and procedure as appropriate under the circumstances of a particular case.

I. Introduction and Purpose

The purpose of the NRC enforcement program is to support the NRC's overall safety mission in protecting the public and the environment. Consistent with that purpose, enforcement action should be used:

- As a deterrent to emphasize the importance of compliance with requirements, and
- To encourage prompt identification and prompt, comprehensive correction of violations.

Consistent with the purpose of this program, prompt and vigorous enforcement action will be taken when dealing with licensees, vendors,[2] contractors, and their employees, who do not achieve the necessary meticulous attention to detail and the high standard of compliance which the NRC expects.[3] Each enforcement action is dependent on the circumstances of the case and requires the exercise of discretion after consideration of these policies and procedures. In no case, however, will licensees who cannot achieve and maintain adequate levels of protection be permitted to conduct licensed activities.

II. Statutory Authority and Procedural Framework

A. Statutory Authority

The NRC's enforcement jurisdiction is drawn from the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act (ERA) of 1974, as amended.

Section 161 of the Atomic Energy Act authorizes the NRC to conduct inspections and investigations and to issue orders as may be necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property. Section 186 authorizes the NRC to revoke licenses under certain circumstances (e.g., for material false statements, in response to conditions that would have warranted refusal of a license on an original application, for a licensee's failure to build or operate a facility in accordance with the terms of the permit or license, and for violation of an NRC regulation). Section 234 authorizes the NRC to impose civil penalties not to exceed $100,000 per violation per day for the violation of certain specified licensing provisions of the Act, rules, orders, and license terms implementing these provisions, and for violations for which licenses can be revoked. In addition to the enumerated provisions in section 234, sections 84 and 147 authorize the imposition of civil penalties for violations of regulations implementing those provisions. Section 232 authorizes the NRC to seek injunctive or other equitable relief for violation of regulatory requirements.

Section 206 of the Energy Reorganization Act authorizes the NRC to impose civil penalties for knowing and conscious failures to provide certain safety information to the NRC.

Chapter 18 of the Atomic Energy Act provides for varying levels of criminal

[1] Antitrust enforcement matters will be dealt with on a case-by-case basis.

[2] The term ''vendor'' as used in this policy means a supplier of products or services to be used in an NRC-licensed facility or activity.

[3] This policy primarily addresses the activities of NRC licensees and applicants for NRC licenses. Therefore, the term ''licensee'' is used throughout the policy. However, in those cases where the NRC determines that it is appropriate to take enforcement action against a non-licensee or individual, the guidance in this policy will be used, as applicable. Specific guidance regarding enforcement action against individuals and non-licensees is addressed in Sections VIII and X, respectively.

penalties (i.e., monetary fines and imprisonment) for willful violations of the Act and regulations or orders issued under sections 65, 161(b), 161(i), or 161(o) of the Act. Section 223 provides that criminal penalties may be imposed on certain individuals employed by firms constructing or supplying basic components of any utilization facility if the individual knowingly and willfully violates NRC requirements such that a basic component could be significantly impaired. Section 235 provides that criminal penalties may be imposed on persons who interfere with inspectors. Section 236 provides that criminal penalties may be imposed on persons who attempt to or cause sabotage at a nuclear facility or to nuclear fuel. Alleged or suspected criminal violations of the Atomic Energy Act are referred to the Department of Justice for appropriate action.

B. Procedural Framework

Subpart B of 10 CFR part 2 of NRC's regulations sets forth the procedures the NRC uses in exercising its enforcement authority. 10 CFR 2.201 sets forth the procedures for issuing notices of violation.

The procedure to be used in assessing civil penalties is set forth in 10 CFR 2.205. This regulation provides that the civil penalty process is initiated by issuing a Notice of Violation and Proposed Imposition of a Civil Penalty. The licensee or other person is provided an opportunity to contest in writing the proposed imposition of a civil penalty. After evaluation of the response, the civil penalty may be mitigated, remitted, or imposed. An opportunity is provided for a hearing if a civil penalty is imposed. If a civil penalty is not paid following a hearing or if a hearing is not requested, the matter may be referred to the U.S. Department of Justice to institute a civil action in District Court.

The procedure for issuing an order to institute a proceeding to modify, suspend, or revoke a license or to take other action against a licensee or other person subject to the jurisdiction of the Commission is set forth in 10 CFR 2.202. The licensee or any other person adversely affected by the order may request a hearing. The NRC is authorized to make orders immediately effective if required to protect the public health, safety, or interest, or if the violation is willful. Section 2.204 sets out the procedures for issuing a Demand for Information (Demand) to a licensee or other person subject to the Commission's jurisdiction for the purpose of determining whether an order or other enforcement action should be issued. The Demand does not provide hearing rights, as only information is being sought. A licensee must answer a Demand. An unlicensed person may answer a Demand by either providing the requested information or explaining why the Demand should not have been issued.

III. Responsibilities

The Executive Director for Operations (EDO) and the principal enforcement officers of the NRC, the Deputy Executive Director for Nuclear Material Safety, Safeguards and Operations Support (DEDS) and the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations, and Research (DEDR), have been delegated the authority to approve or issue all escalated enforcement actions.[4] The DEDS is responsible to the EDO for the NRC enforcement programs. The Office of Enforcement (OE) exercises oversight of and implements the NRC enforcement programs. The Director, OE, acts for the Deputy Executive Directors in enforcement matters in their absence or as delegated.

Subject to the oversight and direction of OE, and with the approval of the appropriate Deputy Executive Director, where necessary, the regional offices normally issue Notices of Violation and proposed civil penalties. However, subject to the same oversight as the regional offices, the Office of Nuclear Reactor Regulation (NRR) and the Office of Nuclear Material Safety and Safeguards (NMSS) may also issue Notices of Violation and proposed civil penalties for certain activities. Enforcement orders are normally issued by a Deputy Executive Director or the Director, OE. However, orders may also be issued by the EDO, especially those involving the more significant matters. The Directors of NRR and NMSS have also been delegated authority to issue orders, but it is expected that normal use of this authority by NRR and NMSS will be confined to actions not associated with compliance issues. The Director, Office of the Controller, has been delegated the authority to issue orders where licensees violate Commission regulations by nonpayment of license and inspection fees.

In recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, judgment and discretion must be exercised in determining the severity levels of the violations and the appropriate enforcement sanctions, including the decision to issue a Notice of Violation, or to propose or impose a civil penalty and the amount of this penalty, after considering the general principles of this statement of policy and the technical significance of the violations and the surrounding circumstances.

Unless Commission consultation or notification is required by this policy, the staff may depart, where warranted in the public's interest, from this policy as provided in Section VII,''Exercise of Enforcement Discretion.'' The Commission will be provided written notification of all enforcement actions involving civil penalties or orders. The Commission will also be provided notice in those cases where discretion is exercised as discussed in Section VII.B.6. In addition, the Commission will be consulted prior to taking action in the following situations (unless the urgency of the situation dictates immediate action):

(1) An action affecting a licensee's operation that requires balancing the public health and safety or common defense and security implications of not operating with the potential radiological or other hazards associated with continued operation;

(2) Proposals to impose civil penalties in amounts greater than 3 times the Severity Level I values shown in Table 1A;

(3) Any proposed enforcement action that involves a Severity Level I violation;

(4) Any enforcement action that involves a finding of a material false statement;

(5) Exercising discretion for matters meeting the criteria of Section VII.A.1 for Commission consultation;

(6) Refraining from taking enforcement action for matters meeting the criteria of Section VII.B.2;

(7) Any proposed enforcement action that involves the issuance of a civil penalty or order to an unlicensed individual or a civil penalty to a licensed reactor operator;

(8) Any action the EDO believes warrants Commission involvement;

(9) Any proposed enforcement case involving an Office of Investigation (OI) report where the staff (other than the OI staff) does not arrive at the same conclusions as those in the OI report concerning issues of intent if the Director of OI concludes that Commission consultation is warranted; and

(10) Any proposed enforcement action on which the Commission asks to be consulted.

[4] The term ''escalated enforcement action'' as used in this policy means a Notice of Violation or civil penalty for any Severity Level I, II, or III violation (or problem) or any order based upon a violation.

IV. Severity of Violations

Regulatory requirements[5] have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance of each violation, including both the technical significance and the regulatory significance is evaluated as the first step in the enforcement process.

Consequently, for purposes of formal enforcement action, violations are normally categorized in terms of four levels of severity to show their relative importance within each of the following eight activity areas:

I. Reactor Operations;
II. Facility Construction;
III. Safeguards;
IV. Health Physics;
V. Transportation;
VI. Fuel Cycle and Materials Operations;
VII. Miscellaneous Matters; and
VIII. Emergency Preparedness.

Licensed activities will be placed in the activity area most suitable in light of the particular violation involved including activities not directly covered by one of the above listed areas, e.g., export license activities. Within each activity area, Severity Level I has been assigned to violations that are the most significant and Severity Level IV violations are the least significant. Severity Level I and II violations are of very significant regulatory concern. In general, violations that are included in these severity categories involve actual or high potential impact on the public. Severity Level III violations are cause for significant regulatory concern. Severity Level IV violations are less serious but are of more than minor concern; i.e., if left uncorrected, they could lead to a more serious concern.

The Commission recognizes that there are other violations of minor safety or environmental concern which are below the level of significance of Severity Level IV violations. These minor violations are not the subject of formal enforcement action and are not usually described in inspection reports. To the extent such violations are described, they are noted as Non-Cited Violations.[6]

Comparisons of significance between activity areas are inappropriate. For example, the immediacy of any hazard to the public associated with Severity Level I violations in Reactor Operations is not directly comparable to that associated with Severity Level I violations in Facility Construction.

Supplements I through VIII provide examples and serve as guidance in determining the appropriate severity level for violations in each of the eight activity areas. However, the examples are neither exhaustive nor controlling. In addition, these examples do not create new requirements. Each is designed to illustrate the significance that the NRC places on a particular type of violation of NRC requirements. Each of the examples in the supplements is predicated on a violation of a regulatory requirement.

The NRC reviews each case being considered for enforcement action on its own merits to ensure that the severity of a violation is characterized at the level best suited to the significance of the particular violation. In some cases, special circumstances may warrant an adjustment to the severity level categorization.

A. Aggregation of Violations

A group of Severity Level IV violations may be evaluated in the aggregate and assigned a single, increased severity level, thereby resulting in a Severity Level III problem, if the violations have the same underlying cause or programmatic deficiencies, or the violations contributed to or were unavoidable consequences of the underlying problem. Normally, Severity Level II and III violations are not aggregated into a higher severity level.

The purpose of aggregating violations is to focus the licensee's attention on the fundamental underlying causes for which enforcement action appears warranted and to reflect the fact that several violations with a common cause may be more significant collectively than individually and may therefore, warrant a more substantial enforcement action.

B. Repetitive Violations

The severity level of a Severity Level IV violation may be increased to Severity Level III, if the violation can be considered a repetitive violation.[7] The purpose of escalating the severity level of a repetitive violation is to acknowledge the added significance of the situation based on the licensee's failure to implement effective corrective action for the previous violation. The decision to escalate the severity level of a repetitive violation will depend on the circumstances, such as, but not limited to, the number of times the violation has occurred, the similarity of the violations and their root causes, the adequacy of previous corrective actions, the period of time between the violations, and the significance of the violations.

C. Willful Violations

Willful violations are by definition of particular concern to the Commission because its regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor. Willful violations cannot be tolerated by either the Commission or a licensee. Licensees are expected to take significant remedial action in responding to willful violations commensurate with the circumstances such that it demonstrates the seriousness of the violation thereby creating a deterrent effect within the licensee's organization. Although removal of the person is not necessarily required, substantial disciplinary action is expected.

Therefore, the severity level of a violation may be increased if the circumstances surrounding the matter involve careless disregard of requirements, deception, or other indications of willfulness. The term ''willfulness'' as used in this policy embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements. Willfulness does not include acts which do not rise to the level of careless disregard, e.g., inadvertent clerical errors in a document submitted to the NRC. In determining the specific severity level of a violation involving willfulness, consideration will be given to such factors as the position and responsibilities of the person involved in the violation (e.g., licensee official[8] or non-supervisory employee), the significance of any underlying violation, the intent of the violator (i.e., careless disregard or deliberateness), and the economic or other advantage, if any, gained as a result of the violation. The relative weight given to each of these

[5] The term ''requirement'' as used in this policy means a legally binding requirement such as a statute, regulation, license condition, technical specification, or order.

[6] A Non-Cited Violation (NCV) is a violation that has not been formalized into a 10 CFR 2.201 Notice of Violation.

[7] The term ''repetitive violation'' or ''similar violation'' as used in this policy statement means a violation that reasonably could have been prevented by a licensee's corrective action for a previous violation normally occurring (1) within the past 2 years of the inspection at issue, or (2) the period within the last two inspections, whichever is longer.

[8] The term ''licensee official'' as used in this policy statement means a first-line supervisor or above, a licensed individual, a radiation safety officer, or an authorized user of licensed material whether or not listed on a license. Notwithstanding an individual's job title, severity level categorization for willful acts involving individuals who can be considered licensee officials will consider several factors, including the position of the individual relative to the licensee's organizational structure and the individual's responsibilities relative to the oversight of licensed activities and to the use of licensed material.

factors in arriving at the appropriate severity level will be dependent on the circumstances of the violation. However, if a licensee refuses to correct a minor violation within a reasonable time such that it willfully continues, the violation should be categorized at least at a Severity Level IV.

D. Violations of Reporting Requirements

The NRC expects licensees to provide complete, accurate, and timely information and reports. Accordingly, unless otherwise categorized in the Supplements, the severity level of a violation involving the failure to make a required report to the NRC will be based upon the significance of and the circumstances surrounding the matter that should have been reported. However, the severity level of an untimely report, in contrast to no report, may be reduced depending on the circumstances surrounding the matter. A licensee will not normally be cited for a failure to report a condition or event unless the licensee was actually aware of the condition or event that it failed to report. A licensee will, on the other hand, normally be cited for a failure to report a condition or event if the licensee knew of the information to be reported, but did not recognize that it was required to make a report.

V. Predecisional Enforcement Conferences

Whenever the NRC has learned of the existence of a potential violation for which escalated enforcement action appears to be warranted, or recurring nonconformance on the part of a vendor, the NRC may provide an opportunity for a predecisional enforcement conference with the licensee, vendor, or other person before taking enforcement action. The purpose of the conference is to obtain information that will assist the NRC in determining the appropriate enforcement action, such as: (1) A common understanding of facts, root causes and missed opportunities associated with the apparent violations, (2) a common understanding of corrective action taken or planned, and (3) a common understanding of the significance of issues and the need for lasting comprehensive corrective action.

If the NRC concludes that it has sufficient information to make an informed enforcement decision, a conference will not normally be held unless the licensee requests it. However, an opportunity for a conference will normally be provided before issuing an order based on a violation of the rule on Deliberate Misconduct or a civil penalty to an unlicensed person. If a conference is not held, the licensee will normally be requested to provide a written response to an inspection report, if issued, as to the licensee's views on the apparent violations and their root causes and a description of planned or implemented corrective action.

During the predecisional enforcement conference, the licensee, vendor, or other persons will be given an opportunity to provide information consistent with the purpose of the conference, including an explanation to the NRC of the immediate corrective actions (if any) that were taken following identification of the potential violation or nonconformance and the long-term comprehensive actions that were taken or will be taken to prevent recurrence. Licensees, vendors, or other persons will be told when a meeting is a predecisional enforcement conference.

A predecisional enforcement conference is a meeting between the NRC and the licensee. Conferences are normally held in the regional offices and are not normally open to public observation. However, a trial program is being conducted to open approximately 25 percent of all eligible conferences for public observation, i.e., every fourth eligible conference involving one of three categories of licensees (reactor, hospital, and other materials licensees) will be open to the public. Conferences will not normally be open to the public if the enforcement action being contemplated:

(1) Would be taken against an individual, or if the action, though not taken against an individual, turns on whether an individual has committed wrongdoing;

(2) Involves significant personnel failures where the NRC has requested that the individual(s) involved be present at the conference;

(3) Is based on the findings of an NRC Office of Investigations report; or

(4) Involves safeguards information, Privacy Act information, or information which could be considered proprietary;

In addition, conferences will not normally be open to the public if:

(5) The conference involves medical misadministrations or overexposures and the conference cannot be conducted without disclosing the exposed individual's name; or

(6) The conference will be conducted by telephone or the conference will be conducted at a relatively small licensee's facility.

Notwithstanding meeting any of these criteria, a conference may still be open if the conference involves issues related to an ongoing adjudicatory proceeding with one or more intervenors or where the evidentiary basis for the conference is a matter of public record, such as an adjudicatory decision by the Department of Labor. In addition, with the approval of the Executive Director for Operations, conferences will not be open to the public where good cause has been shown after balancing the benefit of the public observation against the potential impact on the agency's enforcement action in a particular case.

As soon as it is determined that a conference will be open to public observation, the NRC will notify the licensee that the conference will be open to public observation as part of the agency's trial program. Consistent with the agency's policy on open meetings, ''Staff Meetings Open to Public,'' published September 20, 1994 (59 FR 48340), the NRC intends to announce open conferences normally at least 10 working days in advance of conferences through (1) notices posted in the Public Document Room, (2) a toll-free telephone recording at 800–952–9674, and (3) a toll-free electronic bulletin board at 800–952–9676. In addition, the NRC will also issue a press release and notify appropriate State liaison officers that a predecisional enforcement conference has been scheduled and that it is open to public observation.

The public attending open conferences under the trial program may observe but not participate in the conference. It is noted that the purpose of conducting open conferences under the trial program is not to maximize public attendance, but rather to determine whether providing the public with opportunities to be informed of NRC activities is compatible with the NRC's ability to exercise its regulatory and safety responsibilities. Therefore, members of the public will be allowed access to the NRC regional offices to attend open enforcement conferences in accordance with the ''Standard Operating Procedures For Providing Security Support For NRC Hearings And Meetings,'' published November 1, 1991 (56 FR 56251). These procedures provide that visitors may be subject to personnel screening, that signs, banners, posters, etc., not larger than 18'' be permitted, and that disruptive persons may be removed.

Members of the public attending open conferences will be reminded that (1) the apparent violations discussed at predecisional enforcement conferences are subject to further review and may be subject to change prior to any resulting enforcement action and (2) the statements of views or expressions of opinion made by NRC employees at predecisional enforcement conferences, or the lack thereof, are not intended to represent final determinations or beliefs.

Persons attending open conferences will be provided an opportunity to submit written comments concerning the trial program anonymously to the regional office. These comments will be subsequently forwarded to the Director of the Office of Enforcement for review and consideration.

When needed to protect the public health and safety or common defense and security, escalated enforcement action, such as the issuance of an immediately effective order, will be taken before the conference. In these cases, a conference may be held after the escalated enforcement action is taken.

VI. Enforcement Actions

This section describes the enforcement sanctions available to the NRC and specifies the conditions under which each may be used. The basic enforcement sanctions are Notices of Violation, civil penalties, and orders of various types. As discussed further in Section VI.D, related administrative actions such as Notices of Nonconformance, Notices of Deviation, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information are used to supplement the enforcement program. In selecting the enforcement sanctions or administrative actions, the NRC will consider enforcement actions taken by other Federal or State regulatory bodies having concurrent jurisdiction, such as in transportation matters. Usually, whenever a violation of NRC requirements of more than a minor concern is identified, enforcement action is taken. The nature and extent of the enforcement action is intended to reflect the seriousness of the violation involved. For the vast majority of violations, a Notice of Violation or a Notice of Nonconformance is the normal action.

A. Notice of Violation

A Notice of Violation is a written notice setting forth one or more violations of a legally binding requirement. The Notice of Violation normally requires the recipient to provide a written statement describing (1) the reasons for the violation or, if contested, the basis for disputing the violation; (2) corrective steps that have been taken and the results achieved; (3) corrective steps that will be taken to prevent recurrence; and (4) the date when full compliance will be achieved. The NRC may waive all or portions of a written response to the extent relevant information has already been provided to the NRC in writing or documented in an NRC inspection report. The NRC may require responses to Notices of Violation to be under oath. Normally, responses under oath will be required only in connection with Severity Level I, II, or III violations or orders.

The NRC uses the Notice of Violation as the usual method for formalizing the existence of a violation. Issuance of a Notice of Violation is normally the only enforcement action taken, except in cases where the criteria for issuance of civil penalties and orders, as set forth in Sections VI.B and VI.C, respectively, are met. However, special circumstances regarding the violation findings may warrant discretion being exercised such that the NRC refrains from issuing a Notice of Violation. (See Section VII.B, ''Mitigation of Enforcement Sanctions.'') In addition, licensees are not ordinarily cited for violations resulting from matters not within their control, such as equipment failures that were not avoidable by reasonable licensee quality assurance measures or management controls. Generally, however, licensees are held responsible for the acts of their employees. Accordingly, this policy should not be construed to excuse personnel errors.

B. Civil Penalty

A civil penalty is a monetary penalty that may be imposed for violation of (1) certain specified licensing provisions of the Atomic Energy Act or supplementary NRC rules or orders; (2) any requirement for which a license may be revoked; or (3) reporting requirements under section 206 of the Energy Reorganization Act. Civil penalties are designed to deter future violations both by the involved licensee as well as by other licensees conducting similar activities and to emphasize the need for licensees to identify violations and take prompt comprehensive corrective action.

Civil penalties are considered for Severity Level III violations. In addition, civil penalties will normally be assessed for Severity Level I and II violations and knowing and conscious violations of the reporting requirements of section 206 of the Energy Reorganization Act.

Civil penalties are used to encourage prompt identification and prompt and comprehensive correction of violations, to emphasize compliance in a manner that deters future violations, and to serve to focus licensees' attention on violations of significant regulatory concern.

Although management involvement, direct or indirect, in a violation may lead to an increase in the civil penalty, the lack of management involvement may not be used to mitigate a civil penalty. Allowing mitigation in the latter case could encourage the lack of management involvement in licensed activities and a decrease in protection of the public health and safety.

1. Base Civil Penalty

The NRC imposes different levels of penalties for different severity level violations and different classes of licensees, vendors, and other persons. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, materials, and vendor programs. (Civil penalties issued to individuals are determined on a case-by-case basis.) The structure of these tables generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to suspend or terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of the penalties take into account a licensee's ability to pay. In determining the amount of civil penalties for licensees for whom the tables do not reflect the ability to pay or the gravity of the violation, the NRC will consider as necessary an increase or decrease on a case-by-case basis. Normally, if a licensee can demonstrate financial hardship, the NRC will consider payments over time, including interest, rather than reducing the amount of the civil penalty. However, where a licensee claims financial hardship, the licensee will normally be required to address why it has sufficient resources to safely conduct licensed activities and pay license and inspection fees.

2. Civil Penalty Assessment

In an effort to (1) emphasize the importance of adherence to requirements and (2) reinforce prompt self-identification of problems and root causes and prompt and comprehensive correction of violations, the NRC reviews each proposed civil penalty on its own merits and, after considering all relevant circumstances, may adjust the base civil penalties shown in Table 1A and 1B for Severity Level I, II, and III violations as described below.

The civil penalty assessment process considers four decisional points: (a) Whether the licensee has had any previous escalated enforcement action (regardless of the activity area) during the past 2 years or past 2 inspections, whichever is longer; (b) whether the licensee should be given credit for actions related to identification; (c) whether the licensee's corrective actions are prompt and comprehensive; and (d) whether, in view of all the circumstances, the matter in question requires the exercise of discretion. Although each of these decisional points may have several associated considerations for any given case, the outcome of the assessment process for each violation or problem, absent the exercise of discretion, is limited to one of the following three results: no civil penalty, a base civil penalty, or a base civil penalty escalated by 100%. The flow chart presented below is a graphic representation of the civil penalty assessment process.

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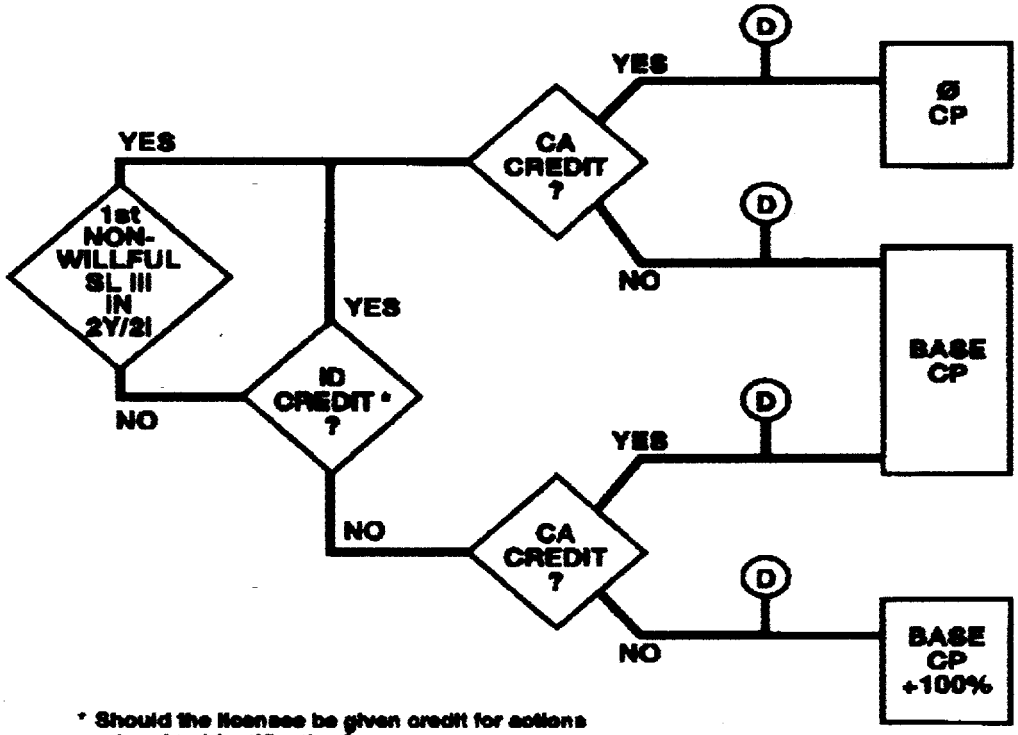

* Should the licensee be given credit for actions related to identification?

(D) Discretion, e.g., SL I and II violations should normally result in a civil penalty regardless of ID and CA.

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a. Initial escalated action. When the NRC determines that a non-willful Severity Level III violation or problem has occurred, and the licensee has not had *any* previous escalated actions (regardless of the activity area) during the past 2 years or 2 inspections, whichever is longer, the NRC will consider whether the licensee's corrective action for the present violation or problem is reasonably prompt and comprehensive (see the discussion under Section VI.B.2.c, below). Using 2 years as the basis for assessment is expected to cover most situations, but considering a slightly longer or shorter period might be warranted based on the circumstances of a particular case. The starting point of this period should be considered the date when the licensee was put on notice of the need to take corrective action. For a licensee-identified violation or an event, this would be when the licensee is aware that a problem or violation exists requiring corrective action. For an NRC-identified violation, the starting point would be when the NRC puts the licensee on notice, which could be during the inspection, at the inspection exit meeting, or as part of post-inspection communication.

If the corrective action is judged to be prompt and comprehensive, a Notice of Violation normally should be issued with no associated civil penalty. If the corrective action is judged to be less than prompt and comprehensive, the Notice of Violation normally should be issued with a base civil penalty.

b. Credit for actions related to identification. (1) If a Severity Level I or II violation or a willful Severity Level III violation has occurred—or if, during the past 2 years or 2 inspections, whichever is longer, the licensee has been issued at least one other escalated action—the civil penalty assessment should normally consider the factor of identification in addition to corrective action (see the discussion under Section VI.B.2.c, below). As to identification, the NRC should consider whether the licensee should be given credit for actions related to identification.

In each case, the decision should be focused on identification of the problem requiring corrective action. In other words, although giving credit for Identification and Corrective Action should be separate decisions, the concept of Identification presumes that the identifier recognizes the existence of a problem, and understands that corrective action is needed. The decision on Identification requires considering all the circumstances of identification including:

(i) Whether the problem requiring corrective action was NRC-identified, licensee-identified, or revealed through an event;[9]

(ii) Whether prior opportunities existed to identify the problem requiring corrective action, and if so, the age and number of those opportunities;

(iii) Whether the problem was revealed as the result of a licensee self-monitoring effort, such as conducting an audit, a test, a surveillance, a design review, or troubleshooting;

(iv) For a problem revealed through an event, the ease of discovery, and the degree of licensee initiative in identifying the root cause of the problem and any associated violations;

(v) For NRC-identified issues, whether the licensee would likely have identified the issue in the same time-period if the NRC had not been involved;

(vi) For NRC-identified issues, whether the licensee should have identified the issue (and taken action) earlier; and

(vii) For cases in which the NRC identifies the overall problem requiring corrective action (e.g., a programmatic issue), the degree of licensee initiative or lack of initiative in identifying the problem or problems requiring corrective action.

(2) Although some cases may consider all of the above factors, the importance of each factor will vary based on the type of case as discussed in the following general guidance:

(i) Licensee-Identified. When a problem requiring corrective action is licensee-identified (i.e., identified before the problem has resulted in an event), the NRC should normally give the licensee credit for actions related to identification, regardless of whether prior opportunities existed to identify the problem.

(ii) Identified Through an Event. When a problem requiring corrective action is identified through an event, the decision on whether to give the licensee credit for actions related to identification normally should consider the ease of discovery, whether the event occurred as the result of a licensee self-monitoring effort (i.e., whether the licensee was ''looking for the problem''), the degree of licensee initiative in identifying the problem or problems requiring corrective action, and whether prior opportunities existed to identify the problem.

Any of these considerations may be overriding if particularly noteworthy or particularly egregious. For example, if the event occurred as the result of conducting a surveillance or similar self-monitoring effort (i.e., the licensee was looking for the problem), the licensee should normally be given credit for identification. As a second instance, even if the problem was easily discovered (e.g., revealed by a large spill of liquid), the NRC may choose to give credit because noteworthy licensee effort was exerted in ferreting out the root cause and associated violations, or simply because no prior opportunities (e.g., procedural cautions, post-maintenance testing, quality control failures, readily observable parameter trends, or repeated or locked-in annunciator warnings) existed to identify the problem.

(iii) NRC-Identified. When a problem requiring corrective action is NRC-identified, the decision on whether to give the licensee credit for actions related to Identification should normally be based on an additional question: should the licensee have reasonably identified the problem (and taken action) earlier?

In most cases, this reasoning may be based simply on the ease of the NRC inspector's discovery (e.g., conducting a walkdown, observing in the control room, performing a confirmatory NRC radiation survey, hearing a cavitating pump, or finding a valve obviously out of position). In some cases, the licensee's missed opportunities to identify the problem might include a similar previous violation, NRC or industry notices, internal audits, or readily observable trends.

If the NRC identifies the violation but concludes that, under the circumstances, the licensee's actions related to Identification were not unreasonable, the matter would be treated as licensee-identified for purposes of assessing the civil penalty. In such cases, the question of Identification credit shifts to whether the licensee should be penalized for NRC's identification of the problem.

(iv) Mixed Identification. For ''mixed'' identification situations (i.e., where multiple violations exist, some NRC-

[9] An ''event,'' as used here, means (1) an event characterized by an active adverse impact on equipment or personnel, readily obvious by human observation or instrumentation, or (2) a radiological impact on personnel or the environment in excess of regulatory limits, such as an overexposure, a release of radioactive material above NRC limits, or a loss of radioactive material. For example, an equipment failure discovered through a spill of liquid, a loud noise, the failure to have a system respond properly, or an annunciator alarm would be considered an event; a system discovered to be inoperable through a document review would not. Similarly, if a licensee discovered, through quarterly dosimetry readings, that employees had been inadequately monitored for radiation, the issue would normally be considered licensee-identified; however, if the same dosimetry readings disclosed an overexposure, the issue would be considered an event.

identified, some licensee-identified, or where the NRC prompted the licensee to take action that resulted in the identification of the violation), the NRC's evaluation should normally determine whether the licensee could reasonably have been expected to identify the violation in the NRC's absence. This determination should consider, among other things, the timing of the NRC's discovery, the information available to the licensee that caused the NRC concern, the specificity of the NRC's concern, the scope of the licensee's efforts, the level of licensee resources given to the investigation, and whether the NRC's path of analysis had been dismissed or was being pursued in parallel by the licensee.

In some cases, the licensee may have addressed the isolated symptoms of each violation (and may have identified the violations), but failed to recognize the common root cause and taken the necessary comprehensive action. Where this is true, the decision on whether to give licensee credit for actions related to Identification should focus on identification of the problem requiring corrective action (e.g., the programmatic breakdown). As such, depending on the chronology of the various violations, the earliest of the individual violations might be considered missed opportunities for the licensee to have identified the larger problem.

(v) Missed Opportunities to Identify. Missed opportunities include prior notifications or missed opportunities to identify or prevent violations such as (1) through normal surveillances, audits, or quality assurance (QA) activities; (2) through prior notice i.e., specific NRC or industry notification; or (3) through other reasonable indication of a potential problem or violation, such as observations of employees and contractors, and failure to take effective corrective steps. It may include findings of the NRC, the licensee, or industry made at other facilities operated by the licensee where it is reasonable to expect the licensee to take action to identify or prevent similar problems at the facility subject to the enforcement action at issue. In assessing this factor, consideration will be given to, among other things, the opportunities available to discover the violation, the ease of discovery, the similarity between the violation and the notification, the period of time between when the violation occurred and when the notification was issued, the action taken (or planned) by the licensee in response to the notification, and the level of management review that the notification received (or should have received).

The evaluation of missed opportunities should normally depend on whether the information available to the licensee should reasonably have caused action that would have prevented the violation. Missed opportunities is normally not applied where the licensee appropriately reviewed the opportunity for application to its activities and reasonable action was either taken or planned to be taken within a reasonable time.

In some situations the missed opportunity is a violation in itself. In these cases, unless the missed opportunity is a Severity Level III violation in itself, the missed opportunity violation may be grouped with the other violations into a single Severity Level III ''problem.'' However, if the missed opportunity is the only violation, then it should not normally be counted twice (i.e., both as the violation and as a missed opportunity— ''double counting'') unless the number of opportunities missed was particularly significant.

The timing of the missed opportunity should also be considered. While a rigid time-frame is unnecessary, a 2-year period should generally be considered for consistency in implementation, as the period reflecting relatively current performance.

(3) When the NRC determines that the licensee should receive credit for actions related to Identification, the civil penalty assessment should normally result in either no civil penalty or a base civil penalty, based on whether Corrective Action is judged to be reasonably prompt and comprehensive. When the licensee is not given credit for actions related to Identification, the civil penalty assessment should normally result in a Notice of Violation with either a base civil penalty or a base civil penalty escalated by 100%, depending on the quality of Corrective Action, because the licensee's performance is clearly not acceptable.

c. Credit for prompt and comprehensive corrective action. The purpose of the Corrective Action factor is to encourage licensees to (1) take the immediate actions necessary upon discovery of a violation that will restore safety and compliance with the license, regulation(s), or other requirement(s); and (2) develop and implement (in a timely manner) the lasting actions that will not only prevent recurrence of the violation at issue, but will be appropriately comprehensive, given the significance and complexity of the violation, to prevent occurrence of violations with similar root causes.

Regardless of other circumstances (e.g., past enforcement history, identification), the licensee's corrective actions should always be evaluated as part of the civil penalty assessment process. As a reflection of the importance given to this factor, an NRC judgment that the licensee's corrective action has not been prompt and comprehensive will always result in issuing at least a base civil penalty.

In assessing this factor, consideration will be given to the timeliness of the corrective action (including the promptness in developing the schedule for long term corrective action), the adequacy of the licensee's root cause analysis for the violation, and, given the significance and complexity of the issue, the comprehensiveness of the corrective action (i.e., whether the action is focused narrowly to the specific violation or broadly to the general area of concern). Even in cases when the NRC, at the time of the enforcement conference, identifies additional peripheral or minor corrective action still to be taken, the licensee may be given credit in this area, as long as the licensee's actions addressed the underlying root cause and are considered sufficient to prevent recurrence of the violation and similar violations.

Normally, the judgment of the adequacy of corrective actions will hinge on whether the NRC had to take action to focus the licensee's evaluative and corrective process in order to obtain comprehensive corrective action. This will normally be judged at the time of the enforcement conference (e.g., by outlining substantive additional areas where corrective action is needed). Earlier informal discussions between the licensee and NRC inspectors or management may result in improved corrective action, but should not normally be a basis to deny credit for Corrective Action. For cases in which the licensee does not get credit for actions related to Identification because the NRC identified the problem, the assessment of the licensee's corrective action should begin from the time when the NRC put the licensee on notice of the problem. Notwithstanding eventual good comprehensive corrective action, if immediate corrective action was not taken to restore safety and compliance once the violation was identified, corrective action would not be considered prompt and comprehensive.

Corrective action for violations involving discrimination should normally only be considered comprehensive if the licensee takes prompt, comprehensive corrective action that (1) addresses the broader

environment for raising safety concerns in the workplace, and (2) provides a remedy for the particular discrimination at issue.

d. Exercise of discretion. As provided in Section VII, ''Exercise of Discretion,'' discretion may be exercised by either escalating or mitigating the amount of the civil penalty determined after applying the civil penalty adjustment factors to ensure that the proposed civil penalty reflects the NRC's concern regarding the violation at issue and that it conveys the appropriate message to the licensee. However, in no instance will a civil penalty for any one violation exceed $100,000 per day.

TABLE 1A.—Base Civil Penalties

a. Power reactors	$100,000
b. Fuel fabricators, industrial processors, and independent spent fuel and monitored retrievable storage installations	25,000
c. Test reactors, mills and uranium conversion facilities, contractors, vendors, waste disposal licensees, and industrial radiographers	10,000
d. Research reactors, academic, medical, or other material licensee [1]	5,000

[1] This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physician offices.

TABLE 1B.—BASE CIVIL PENALTIES

Severity level	Base civil penalty amount (Percent of amount listed in Table 1A)
I	100
II	80
III	50

C. Orders. An order is a written NRC directive to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or to take such other action as may be proper (see 10 CFR 2.202). Orders may also be issued in lieu of, or in addition to, civil penalties, as appropriate for Severity Level I, II, or III violations. Orders may be issued as follows:

1. License Modification orders are issued when some change in licensee equipment, procedures, personnel, or management controls is necessary.

2. Suspension Orders may be used:

(a) To remove a threat to the public health and safety, common defense and security, or the environment;

(b) To stop facility construction when,

(i) Further work could preclude or significantly hinder the identification or correction of an improperly constructed safety-related system or component; or

(ii) The licensee's quality assurance program implementation is not adequate to provide confidence that construction activities are being properly carried out;

(c) When the licensee has not responded adequately to other enforcement action;

(d) When the licensee interferes with the conduct of an inspection or investigation; or

(e) For any reason not mentioned above for which license revocation is legally authorized.

Suspensions may apply to all or part of the licensed activity. Ordinarily, a licensed activity is not suspended (nor is a suspension prolonged) for failure to comply with requirements where such failure is not willful and adequate corrective action has been taken.

3. Revocation Orders may be used:

(a) When a licensee is unable or unwilling to comply with NRC requirements;

(b) When a licensee refuses to correct a violation;

(c) When licensee does not respond to a Notice of Violation where a response was required;

(d) When a licensee refuses to pay an applicable fee under the Commission's regulations; or

(e) For any other reason for which revocation is authorized under section 186 of the Atomic Energy Act (e.g., any condition which would warrant refusal of a license on an original application).

4. Cease and Desist Orders may be used to stop an unauthorized activity that has continued after notification by the NRC that the activity is unauthorized.

5. Orders to unlicensed persons, including vendors and contractors, and employees of any of them, are used when the NRC has identified deliberate misconduct that may cause a licensee to be in violation of an NRC requirement or where incomplete or inaccurate information is deliberately submitted or where the NRC loses its reasonable assurance that the licensee will meet NRC requirements with that person involved in licensed activities.

Unless a separate response is warranted pursuant to 10 CFR 2.201, a Notice of Violation need not be issued where an order is based on violations described in the order. The violations described in an order need not be categorized by severity level.

Orders are made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest, or safety so requires, or when the order is responding to a violation involving willfulness. Otherwise, a prior opportunity for a hearing on the order is afforded. For cases in which the NRC believes a basis could reasonably exist for not taking the action as proposed, the licensee will ordinarily be afforded an opportunity to show why the order should not be issued in the proposed manner by way of a Demand for Information. (See 10 CFR 2.204)

D. Related administrative actions. In addition to the formal enforcement actions, Notices of Violation, civil penalties, and orders, the NRC also uses administrative actions, such as Notices of Deviation, Notices of Nonconformance, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information to supplement its enforcement program. The NRC expects licensees and vendors to adhere to any obligations and commitments resulting from these actions and will not hesitate to issue appropriate orders to ensure that these obligations and commitments are met.

1. Notices of Deviation are written notices describing a licensee's failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. A Notice of Deviation requests a licensee to provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

2. Notices of Nonconformance are written notices describing vendor's failures to meet commitments which have not been made legally binding requirements by NRC. An example is a commitment made in a procurement contract with a licensee as required by 10 CFR Part 50, Appendix B. Notices of Nonconformances request non-licensees to provide written explanations or statements describing corrective steps (taken or planned), the results achieved, the dates when corrective actions will be completed, and measures taken to preclude recurrence.

3. Confirmatory Action Letters are letters confirming a licensee's or vendor's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

4. Letters of Reprimand are letters addressed to individuals subject to Commission jurisdiction identifying a significant deficiency in their performance of licensed activities.

5. Demands for Information are demands for information from licensees or other persons for the purpose of enabling the NRC to determine whether an order or other enforcement action should be issued.

VII. Exercise of Discretion

Notwithstanding the normal guidance contained in this policy, as provided in Section III, ''Responsibilities,'' the NRC may choose to exercise discretion and either escalate or mitigate enforcement sanctions within the Commission's statutory authority to ensure that the resulting enforcement action appropriately reflects the level of NRC concern regarding the violation at issue and conveys the appropriate message to the licensee.

A. Escalation of Enforcement Sanctions

The NRC considers violations categorized at Severity Level I, II, or III to be of significant regulatory concern. If the application of the normal guidance in this policy does not result in an appropriate sanction, with the approval of the appropriate Deputy Executive Director and consultation with the EDO and Commission, as warranted, the NRC may apply its full enforcement authority where the action is warranted. NRC action may include (1) escalating civil penalties, (2) issuing appropriate orders, and (3) assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of $100,000 per violation, per day.

1. Civil penalties. Notwithstanding the outcome of the normal civil penalty assessment process addressed in Section VI.B, the NRC may exercise discretion by either proposing a civil penalty where application of the factors would otherwise result in zero penalty or by escalating the amount of the resulting civil penalty (i.e., base or twice the base civil penalty) to ensure that the proposed civil penalty reflects the significance of the circumstances and conveys the appropriate regulatory message to the licensee. Consultation with the Commission is required if the deviation in the amount of the civil penalty proposed under this discretion from the amount of the civil penalty assessed under the normal process is more than two times the base civil penalty shown in Tables 1A and 1B. Examples when this discretion should be considered include, but are not limited to the following:

(a) Problems categorized at Severity Level I or II;

(b) Overexposures, or releases of radiological material in excess of NRC requirements;

(c) Situations involving particularly poor licensee performance, or involving willfulness;

(d) Situations when the licensee's previous enforcement history has been particularly poor, or when the current violation is directly repetitive of an earlier violation;

(e) Situations when the excessive duration of a problem has resulted in a substantial increase in risk;

(f) Situations when the licensee made a conscious decision to be in noncompliance in order to obtain an economic benefit; or

(g) Cases involving the loss of a source. In addition, unless the licensee self-identifies and reports the loss to the NRC, these cases should normally result in a civil penalty in an amount at least in the order of the cost of an authorized disposal of the material or of the transfer of the material to an authorized recipient.

2. Orders. The NRC may, where necessary or desirable, issues orders in conjunction with or in lieu of civil penalties to achieve or formalize corrective actions and to deter further recurrence of serious violations.

3. Daily civil penalties. In order to recognize the added technical safety significance or regulatory significance for those cases where a very strong message is warranted for a significant violation that continues for more than one day, the NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit of $100,000 for each day the violation continues. The NRC may exercise this discretion if a licensee was aware or clearly should have been aware of a violation, or if the licensee had an opportunity to identify and correct the violation but failed to do so.

B. Mitigation of Enforcement Sanctions

The NRC may exercise discretion and refrain from issuing a civil penalty and/or a Notice of Violation, if the outcome of the normal process described in Section VI.B does not result in a sanction consistent with an appropriate regulatory message. In addition, even if the NRC exercises this discretion, when the licensee failed to make a required report to the NRC, a separate enforcement action will normally be issued for the licensee's failure to make a required report. The approval of the Director, Office of Enforcement, with consultation with the appropriate Deputy Executive Director as warranted, is required for exercising discretion of the type described in Section VII.B.1.b where a willful violation is involved, and of the types described in Sections VII.B.2 through VII.B.5. Commission consultation is required for exercising discretion of the type described in Section VII.B.2 and the approval of the appropriate Deputy Executive Director and Commission notification is required for exercising the discretion of the type described in Section VII.B.6. Examples when discretion should be considered for departing from the normal approach in Section VI.B include but are not limited to the following:

1. Licensee-Identified Severity Level IV Violations. The NRC, with the approval of the Regional Administrator or his designee, may refrain from issuing a Notice of Violation for a Severity Level IV violation that is documented in an inspection report (or official field notes for some material cases) and described therein as a Non-Cited Violation (NCV) provided that the inspection report includes a brief description of the corrective action and that the violation meets all of the following criteria:

(a) It was identified by the licensee, including identification through an event;

(b) It was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation or a previous licensee finding that occurred within the past 2 years of the inspection at issue, or the period within the last two inspections, whichever is longer;

(c) It was or will be corrected within a reasonable time, by specific corrective action committed to by the licensee by the end of the inspection, including immediate corrective action and comprehensive corrective action to prevent recurrence;

(d) It was not a willful violation or if it was a willful violation;

(i) The information concerning the violation, if not required to be reported, was promptly provided to appropriate NRC personnel, such as a resident inspector or regional section or branch chief;

(ii) The violation involved the acts of a low-level individual (and not a licensee official as defined in Section IV.C);

(iii) The violation appears to be the isolated action of the employee without management involvement and the violation was not caused by lack of management oversight as evidenced by either a history of isolated willful violations or a lack of adequate audits or supervision of employees; and

(iv) Significant remedial action commensurate with the circumstances was taken by the licensee such that it demonstrated the seriousness of the violation to other employees and contractors, thereby creating a deterrent effect within the licensee's organization. Although removal of the employee from licensed activities is not necessarily required, substantial disciplinary action is expected.

2. Violations Identified During Extended Shutdowns or Work

Stoppages. The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a violation that is identified after (i) the NRC has taken significant enforcement action based upon a major safety event contributing to an extended shutdown of an operating reactor or a material licensee (or a work stoppage at a construction site), or (ii) the licensee enters an extended shutdown or work stoppage related to generally poor performance over a long period of time, provided that the violation is documented in an inspection report (or official field notes for some material cases) and that it meets all of the following criteria:

(a) It was either licensee-identified as a result of a comprehensive program for problem identification and correction that was developed in response to the shutdown or identified as a result of an employee allegation to the licensee; (If the NRC identifies the violation and all of the other criteria are met, the NRC should determine whether enforcement action is necessary to achieve remedial action, or if discretion may still be appropriate.)

(b) It is based upon activities of the licensee prior to the events leading to the shutdown;

(c) It would not be categorized at a severity level higher than Severity Level II;

(d) It was not willful; and

(e) The licensee's decision to restart the plant requires NRC concurrence.

3. Violations Involving Old Design Issues. The NRC may refrain from proposing a civil penalty for a Severity Level II or III violation involving a past problem, such as in engineering, design, or installation, provided that the violation is documented in an inspection report (or official field notes for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

(a) It was licensee-identified as a result of its voluntary initiative;

(b) It was or will be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification (this action should involve expanding the initiative, as necessary, to identify other failures caused by similar root causes); and

(c) It was not likely to be identified (after the violation occurred) by routine licensee efforts such as normal surveillance or quality assurance (QA) activities.

In addition, the NRC may refrain from issuing a Notice of Violation for cases that meet the above criteria provided the violation was caused by conduct that is not reasonably linked to present performance (normally, violations that are at least 3 years old or violations occurring during plant construction) and there had not been prior notice so that the licensee should have reasonably identified the violation earlier. This exercise of discretion is to place a premium on licensees initiating efforts to identify and correct subtle violations that are not likely to be identified by routine efforts before degraded safety systems are called upon to work.

4. Violations Identified Due to Previous Escalated Enforcement Action. The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a violation that is identified after the NRC has taken escalated enforcement action for a Severity Level II or III violation, provided that the violation is documented in an inspection report (or official field notes for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

(a) It was licensee-identified as part of the corrective action for the previous escalated enforcement action;

(b) It has the same or similar root cause as the violation for which escalated enforcement action was issued;

(c) It does not substantially change the safety significance or the character of the regulatory concern arising out of the initial violation; and

(d) It was or will be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification.

5. Violations Involving Certain Discrimination Issues. Enforcement discretion may be exercised for discrimination cases when a licensee who, without the need for government intervention, identifies an issue of discrimination and takes prompt, comprehensive, and effective corrective action to address both the particular situation and the overall work environment for raising safety concerns. Similarly, enforcement may not be warranted where a complaint is filed with the Department of Labor (DOL) under Section 211 of the Energy Reorganization Act of 1974, as amended, but the licensee settles the matter before the DOL makes an initial finding of discrimination and addresses the overall work environment. Alternatively, if a finding of discrimination is made, the licensee may choose to settle the case before the evidentiary hearing begins. In such cases, the NRC may exercise its discretion not to take enforcement action when the licensee has addressed the overall work environment for raising safety concerns and has publicized that a complaint of discrimination for engaging in protected activity was made to the DOL, that the matter was settled to the satisfaction of the employee (the terms of the specific settlement agreement need not be posted), and that, if the DOL Area Office found discrimination, the licensee has taken action to positively reemphasize that discrimination will not be tolerated. Similarly, the NRC may refrain from taking enforcement action if a licensee settles a matter promptly after a person comes to the NRC without going to the DOL. Such discretion would normally not be exercised in cases in which the licensee does not appropriately address the overall work environment (*e.g.*, by using training, postings, revised policies or procedures, any necessary disciplinary action, etc., to communicate its policy against discrimination) or in cases that involve: allegations of discrimination as a result of providing information directly to the NRC, allegations of discrimination caused by a manager above first-line supervisor (consistent with current Enforcement Policy classification of Severity Level I or II violations), allegations of discrimination where a history of findings of discrimination (by the DOL or the NRC) or settlements suggests a programmatic rather than an isolated discrimination problem, or allegations of discrimination which appear particularly blatant or egregious.

6. Violations Involving Special Circumstances. Notwithstanding the outcome of the normal civil penalty assessment process addressed in Section VI.B, as provided in Section III, ''Responsibilities,'' the NRC may reduce or refrain from issuing a civil penalty or a Notice of Violation for a Severity Level II or III violation based on the merits of the case after considering the guidance in this statement of policy and such factors as the age of the violation, the safety significance of the violation, the overall sustained performance of the licensee has been particularly good, and other relevant circumstances, including any that may have changed since the violation. This discretion is expected to be exercised only where application of the normal guidance in the policy is unwarranted.

C. Exercise of Discretion for an Operating Facility

On occasion, circumstances may arise where a licensee's compliance with a Technical Specification (TS) Limiting Condition for Operation or with other license conditions would involve an

unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. In these circumstances, the NRC staff may choose not to enforce the applicable TS or other license condition. This enforcement discretion, designated as a Notice of Enforcement Discretion (NOED), will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety. A licensee seeking the issuance of a NOED must provide a written justification, or in circumstances where good cause is shown, oral justification followed as soon as possible by written justification, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary in making a decision on whether or not to issue a NOED.

The appropriate Regional Administrator, or his or her designee, may issue a NOED where the noncompliance is temporary and nonrecurring when an amendment is not practical. The Director, Office of Nuclear Reactor Regulation, or his or her designee, may issue a NOED if the expected noncompliance will occur during the brief period of time it requires the NRC staff to process an emergency or exigent license amendment under the provisions of 10 CFR 50.91(a)(5) or (6). The person exercising enforcement discretion will document the decision.

For an operating plant, this exercise of enforcement discretion is intended to minimize the potential safety consequences of unnecessary plant transients with the accompanying operational risks and impacts or to eliminate testing, inspection, or system realignment which is inappropriate for the particular plant conditions. For plants in a shutdown condition, exercising enforcement discretion is intended to reduce shutdown risk by, again, avoiding testing, inspection or system realignment which is inappropriate for the particular plant conditions, in that, it does not provide a safety benefit or may, in fact, be detrimental to safety in the particular plant condition. Exercising enforcement discretion for plants attempting to startup is less likely than exercising it for an operating plant, as simply delaying startup does not usually leave the plant in a condition in which it could experience undesirable transients. In such cases, the Commission would expect that discretion would be exercised with respect to equipment or systems only when it has at least concluded that, notwithstanding the conditions of the license: (1) The equipment or system does not perform a safety function in the mode in which operation is to occur; (2) the safety function performed by the equipment or system is of only marginal safety benefit, provided remaining in the current mode increases the likelihood of an unnecessary plant transient; or (3) the TS or other license condition requires a test, inspection or system realignment that is inappropriate for the particular plant conditions, in that it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

The decision to exercise enforcement discretion does not change the fact that a violation will occur nor does it imply that enforcement discretion is being exercised for any violation that may have led to the violation at issue. In each case where the NRC staff has chosen to issue a NOED, enforcement action will normally be taken for the root causes, to the extent violations were involved, that led to the noncompliance for which enforcement discretion was used. The enforcement action is intended to emphasize that licensees should not rely on the NRC's authority to exercise enforcement discretion as a routine substitute for compliance or for requesting a license amendment.

Finally, it is expected that the NRC staff will exercise enforcement discretion in this area infrequently. Although a plant must shut down, refueling activities may be suspended, or plant startup may be delayed, absent the exercise of enforcement discretion, the NRC staff is under no obligation to take such a step merely because it has been requested. The decision to forego enforcement is discretionary. When enforcement discretion is to be exercised, it is to be exercised only if the NRC staff is clearly satisfied that such action is warranted from a health and safety perspective.

VIII. Enforcement Actions Involving Individuals

Enforcement actions involving individuals, including licensed operators, are significant personnel actions, which will be closely controlled and judiciously applied. An enforcement action involving an individual will normally be taken only when the NRC is satisfied that the individual fully understood, or should have understood, his or her responsibility; knew, or should have known, the required actions; and knowingly, or with careless disregard (i.e., with more than mere negligence) failed to take required actions which have actual or potential safety significance. Most transgressions of individuals at the level of Severity Level III or IV violations will be handled by citing only the facility licensee.

More serious violations, including those involving the integrity of an individual (e.g., lying to the NRC) concerning matters within the scope of the individual's responsibilities, will be considered for enforcement action against the individual as well as against the facility licensee. Action against the individual, however, will not be taken if the improper action by the individual was caused by management failures. The following examples of situations illustrate this concept:

- Inadvertent individual mistakes resulting from inadequate training or guidance provided by the facility licensee.
- Inadvertently missing an insignificant procedural requirement when the action is routine, fairly uncomplicated, and there is no unusual circumstance indicating that the procedures should be referred to and followed step-by-step.
- Compliance with an express direction of management, such as the Shift Supervisor or Plant Manager, resulted in a violation unless the individual did not express his or her concern or objection to the direction.
- Individual error directly resulting from following the technical advice of an expert unless the advice was clearly unreasonable and the licensed individual should have recognized it as such.
- Violations resulting from inadequate procedures unless the individual used a faulty procedure knowing it was faulty and had not attempted to get the procedure corrected.

Listed below are examples of situations which could result in enforcement actions involving individuals, licensed or unlicensed. If the actions described in these examples are taken by a licensed operator or taken deliberately by an unlicensed individual, enforcement action may be taken directly against the individual. However, violations involving willful conduct not amounting to deliberate action by an unlicensed individual in these situations may result in enforcement action against a licensee that may impact an individual. The situations include, but are not limited to, violations that involve:

- Willfully causing a licensee to be in violation of NRC requirements.

- Willfully taking action that would have caused a licensee to be in violation of NRC requirements but the action did not do so because it was detected and corrective action was taken.
- Recognizing a violation of procedural requirements and willfully not taking corrective action.
- Willfully defeating alarms which have safety significance.
- Unauthorized abandoning of reactor controls.
- Dereliction of duty.
- Falsifying records required by NRC regulations or by the facility license.
- Willfully providing, or causing a licensee to provide, an NRC inspector or investigator with inaccurate or incomplete information on a matter material to the NRC.
- Willfully withholding safety significant information rather than making such information known to appropriate supervisory or technical personnel in the licensee's organization.
- Submitting false information and as a result gaining unescorted access to a nuclear power plant.
- Willfully providing false data to a licensee by a contractor or other person who provides test or other services, when the data affects the licensee's compliance with 10 CFR part 50, appendix B, or other regulatory requirement.
- Willfully providing false certification that components meet the requirements of their intended use, such as ASME Code.
- Willfully supplying, by vendors of equipment for transportation of radioactive material, casks that do not comply with their certificates of compliance.
- Willfully performing unauthorized bypassing of required reactor or other facility safety systems.
- Willfully taking actions that violate Technical Specification Limiting Conditions for Operation or other license conditions (enforcement action for a willful violation will not be taken if that violation is the result of action taken following the NRC's decision to forego enforcement of the Technical Specification or other license condition or if the operator meets the requirements of 10 CFR 50.54 (x), (i.e., unless the operator acted unreasonably considering all the relevant circumstances surrounding the emergency.)

Normally, some enforcement action is taken against a licensee for violations caused by significant acts of wrongdoing by its employees, contractors, or contractors' employees. In deciding whether to issue an enforcement action to an unlicensed person as well as to the licensee, the NRC recognizes that judgments will have to be made on a case by case basis. In making these decisions, the NRC will consider factors such as the following:

1. The level of the individual within the organization.
2. The individual's training and experience as well as knowledge of the potential consequences of the wrongdoing.
3. The safety consequences of the misconduct.
4. The benefit to the wrongdoer, e.g., personal or corporate gain.
5. The degree of supervision of the individual, i.e., how closely is the individual monitored or audited, and the likelihood of detection (such as a radiographer working independently in the field as contrasted with a team activity at a power plant).
6. The employer's response, e.g., disciplinary action taken.
7. The attitude of the wrongdoer, e.g., admission of wrongdoing, acceptance of responsibility.
8. The degree of management responsibility or culpability.
9. Who identified the misconduct.

Any proposed enforcement action involving individuals must be issued with the concurrence of the appropriate Deputy Executive Director. The particular sanction to be used should be determined on a case-by-case basis.[10] Notices of Violation and Orders are examples of enforcement actions that may be appropriate against individuals. The administrative action of a Letter of Reprimand may also be considered. In addition, the NRC may issue Demands for Information to gather information to enable it to determine whether an order or other enforcement action should be issued.

Orders to NRC-licensed reactor operators may involve suspension for a specified period, modification, or revocation of their individual licenses. Orders to unlicensed individuals might include provisions that would:

- Prohibit involvement in NRC licensed activities for a specified period of time (normally the period of suspension would not exceed 5 years) or until certain conditions are satisfied, e.g., completing specified training or meeting certain qualifications.
- Require notification to the NRC before resuming work in licensed activities.
- Require the person to tell a prospective employer or customer engaged in licensed activities that the person has been subject to an NRC order.

In the case of a licensed operator's failure to meet applicable fitness-for-duty requirements (10 CFR 55.53(j)), the NRC may issue a Notice of Violation or a civil penalty to the Part 55 licensee, or an order to suspend, modify, or revoke the Part 55 license. These actions may be taken the first time a licensed operator fails a drug or alcohol test, that is, receives a confirmed positive test that exceeds the cutoff levels of 10 CFR Part 26 or the facility licensee's cutoff levels, if lower. However, normally only a Notice of Violation will be issued for the first confirmed positive test in the absence of aggravating circumstances such as errors in the performance of licensed duties or evidence of prolonged use. In addition, the NRC intends to issue an order to suspend the Part 55 license for up to 3 years the second time a licensed operator exceeds those cutoff levels. In the event there are less than 3 years remaining in the term of the individual's license, the NRC may consider not renewing the individual's license or not issuing a new license after the three year period is completed. The NRC intends to issue an order to revoke the Part 55 license the third time a licensed operator exceeds those cutoff levels. A licensed operator or applicant who refuses to participate in the drug and alcohol testing programs established by the facility licensee or who is involved in the sale, use, or possession of an illegal drug is also subject to license suspension, revocation, or denial.

In addition, the NRC may take enforcement action against a licensee that may impact an individual, where the conduct of the individual places in question the NRC's reasonable assurance that licensed activities will be properly conducted. The NRC may take enforcement action for reasons that would warrant refusal to issue a license on an original application. Accordingly, appropriate enforcement actions may be taken regarding matters that raise issues of integrity, competence, fitness-for-duty, or other matters that may not necessarily be a violation of specific Commission requirements.

In the case of an unlicensed person, whether a firm or an individual, an order modifying the facility license may

[10] Except for individuals subject to civil penalties under section 206 of the Energy Reorganization Act of 1974, as amended, NRC will not normally impose a civil penalty against an individual. However, section 234 of the Atomic Energy Act (AEA) gives the Commission authority to impose civil penalties on ''any person.'' ''Person'' is broadly defined in Section 11s of the AEA to include individuals, a variety of organizations, and any representatives or agents. This gives the Commission authority to impose civil penalties on employees of licensees or on separate entities when a violation of a requirement directly imposed on them is committed.

be issued to require (1) The removal of the person from all licensed activities for a specified period of time or indefinitely, (2) prior notice to the NRC before utilizing the person in licensed activities, or (3) the licensee to provide notice of the issuance of such an order to other persons involved in licensed activities making reference inquiries. In addition, orders to employers might require retraining, additional oversight, or independent verification of activities performed by the person, if the person is to be involved in licensed activities.

IX. Inaccurate and Incomplete Information

A violation of the regulations involving submittal of incomplete and/or inaccurate information, whether or not considered a material false statement, can result in the full range of enforcement sanctions. The labeling of a communication failure as a material false statement will be made on a case-by-case basis and will be reserved for egregious violations. Violations involving inaccurate or incomplete information or the failure to provide significant information identified by a licensee normally will be categorized based on the guidance herein, in Section IV, ''Severity of Violations,'' and in Supplement VII.

The Commission recognizes that oral information may in some situations be inherently less reliable than written submittals because of the absence of an opportunity for reflection and management review. However, the Commission must be able to rely on oral communications from licensee officials concerning significant information. Therefore, in determining whether to take enforcement action for an oral statement, consideration may be given to factors such as (1) The degree of knowledge that the communicator should have had, regarding the matter, in view of his or her position, training, and experience; (2) the opportunity and time available prior to the communication to assure the accuracy or completeness of the information; (3) the degree of intent or negligence, if any, involved; (4) the formality of the communication; (5) the reasonableness of NRC reliance on the information; (6) the importance of the information which was wrong or not provided; and (7) the reasonableness of the explanation for not providing complete and accurate information.

Absent at least careless disregard, an incomplete or inaccurate unsworn oral statement normally will not be subject to enforcement action unless it involves significant information provided by a licensee official. However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to the NRC by a licensee official or others on behalf of a licensee, if a record was made of the oral information and provided to the licensee thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication or meeting summary containing the error was made available to the licensee and was not subsequently corrected in a timely manner.

When a licensee has corrected inaccurate or incomplete information, the decision to issue a Notice of Violation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether the NRC or the licensee identified the problem with the communication, and whether the NRC relied on the information prior to the correction. Generally, if the matter was promptly identified and corrected by the licensee prior to reliance by the NRC, or before the NRC raised a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after the NRC relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected. However, if the initial submittal was accurate when made but later turns out to be erroneous because of newly discovered information or advance in technology, a citation normally would not be appropriate if, when the new information became available or the advancement in technology was made, the initial submittal was corrected.

The failure to correct inaccurate or incomplete information which the licensee does not identify as significant normally will not constitute a separate violation. However, the circumstances surrounding the failure to correct may be considered relevant to the determination of enforcement action for the initial inaccurate or incomplete statement. For example, an unintentionally inaccurate or incomplete submission may be treated as a more severe matter if the licensee later determines that the initial submittal was in error and does not correct it or if there were clear opportunities to identify the error. If information not corrected was recognized by a licensee as significant, a separate citation may be made for the failure to provide significant information. In any event, in serious cases where the licensee's actions in not correcting or providing information raise questions about its commitment to safety or its fundamental trustworthiness, the Commission may exercise its authority to issue orders modifying, suspending, or revoking the license. The Commission recognizes that enforcement determinations must be made on a case-by-case basis, taking into consideration the issues described in this section.

X. Enforcement Action Against Non-Licensees

The Commission's enforcement policy is also applicable to non-licensees, including employees of licensees, to contractors and subcontractors, and to employees of contractors and subcontractors, who knowingly provide components, equipment, or other goods or services that relate to a licensee's activities subject to NRC regulation. The prohibitions and sanctions for any of these persons who engage in deliberate misconduct or submission of incomplete or inaccurate information are provided in the rule on deliberate misconduct, e.g., 10 CFR 30.10 and 50.5.

Vendors of products or services provided for use in nuclear activities are subject to certain requirements designed to ensure that the products or services supplied that could affect safety are of high quality. Through procurement contracts with reactor licensees, vendors may be required to have quality assurance programs that meet applicable requirements including 10 CFR Part 50, Appendix B, and 10 CFR Part 71, Subpart H. Vendors supplying products or services to reactor, materials, and 10 CFR Part 71 licensees are subject to the requirements of 10 CFR Part 21 regarding reporting of defects in basic components.

When inspections determine that violations of NRC requirements have occurred, or that vendors have failed to fulfill contractual commitments (e.g., 10 CFR Part 50, Appendix B) that could adversely affect the quality of a safety significant product or service, enforcement action will be taken. Notices of Violation and civil penalties will be used, as appropriate, for licensee failures to ensure that their vendors have programs that meet applicable requirements. Notices of Violation will be issued for vendors that violate 10 CFR Part 21. Civil penalties will be imposed against individual directors or responsible officers of a vendor organization who knowingly and consciously fail to provide the notice required by 10 CFR 21.21(b)(1). Notices

of Nonconformance will be used for vendors which fail to meet commitments related to NRC activities.

XI. Referrals to the Department of Justice

Alleged or suspected criminal violations of the Atomic Energy Act (and of other relevant Federal laws) are referred to the Department of Justice (DOJ) for investigation. Referral to the DOJ does not preclude the NRC from taking other enforcement action under this policy. However, enforcement actions will be coordinated with the DOJ in accordance with the Memorandum of Understanding between the NRC and the DOJ, 53 FR 50317 (December 14, 1988).

XII. Public Disclosure of Enforcement Actions

Enforcement actions and licensees' responses, in accordance with 10 CFR 2.790, are publicly available for inspection. In addition, press releases are generally issued for orders and civil penalties and are issued at the same time the order or proposed imposition of the civil penalty is issued. In addition, press releases are usually issued when a proposed civil penalty is withdrawn or substantially mitigated by some amount. Press releases are not normally issued for Notices of Violation that are not accompanied by orders or proposed civil penalties.

XIII. Reopening Closed Enforcement Actions

If significant new information is received or obtained by NRC which indicates that an enforcement sanction was incorrectly applied, consideration may be given, dependent on the circumstances, to reopening a closed enforcement action to increase or decrease the severity of a sanction or to correct the record. Reopening decisions will be made on a case-by-case basis, are expected to occur rarely, and require the specific approval of the appropriate Deputy Executive Director.

Supplement I—Reactor Operations

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of reactor operations.

A. Severity Level I—Violations involving for example:

1. A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications being exceeded;

2. A system [11] designed to prevent or mitigate a serious safety event not being able to perform its intended safety function [12] when actually called upon to work;

3. An accidental criticality; or

4. A licensed operator at the controls of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors which result in, or exacerbate the consequences of, an alert or higher level emergency and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol.

B. Severity Level II—Violations involving for example:

1. A system designed to prevent or mitigate serious safety events not being able to perform its intended safety function;

2. A licensed operator involved in the use, sale, or possession of illegal drugs or the consumption of alcoholic beverages, within the protected area; or

3. A licensed operator at the control of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol.

C. Severity Level III—Violations involving for example:

1. A significant failure to comply with the Action Statement for a Technical Specification Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In a pressurized water reactor, in the applicable modes, having one high-pressure safety injection pump inoperable for a period in excess of that allowed by the action statement; or

(b) In a boiling water reactor, one primary containment isolation valve inoperable for a period in excess of that allowed by the action statement.

2. A system designed to prevent or mitigate a serious safety event:

(a) Not being able to perform its intended function under certain conditions (e.g., safety system not operable unless offsite power is available; materials or components not environmentally qualified); or

(b) Being degraded to the extent that a detailed evaluation would be required to determine its operability (e.g., component parameters outside approved limits such as pump flow rates, heat exchanger transfer characteristics, safety valve lift setpoints, or valve stroke times);

3. Inattentiveness to duty on the part of licensed personnel;

4. Changes in reactor parameters that cause unanticipated reductions in margins of safety;

5. A significant failure to meet the requirements of 10 CFR 50.59, including a failure such that a required license amendment was not sought;

6. A licensee failure to conduct adequate oversight of vendors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;

7. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities; or

8. A licensed operator's confirmed positive test for drugs or alcohol that does not result in a Severity Level I or II violation.

9. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient.

D. Severity Level IV—Violations involving for example:

1. A less significant failure to comply with the Action Statement for a Technical Specification Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In a pressurized water reactor, a 5% deficiency in the required volume of the condensate storage tank; or

(b) In a boiling water reactor, one subsystem of the two independent MSIV leakage control subsystems inoperable;

2. A failure to meet the requirements of 10 CFR 50.59 that does not result in a Severity Level I, II, or III violation;

3. A failure to meet regulatory requirements that have more than minor safety or environmental significance; or

4. A failure to make a required Licensee Event Report.

Supplement II—Part 50 Facility Construction

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of Part 50 facility construction.

A. Severity Level I—Violations involving structures or systems that are completed [13] in such a manner that they

[11] The term ''system'' as used in these supplements, includes administrative and managerial control systems, as well as physical systems.

[12] ''Intended safety function'' means the total safety function, and is not directed toward a loss of redundancy. A loss of one subsystem does not defeat the intended safety function as long as the other subsystem is operable.

[13] The term ''completed'' as used in this supplement means completion of construction including review and acceptance by the construction QA organization.

would not have satisfied their intended safety related purpose.

B. Severity Level II—Violations involving for example:

1. A breakdown in the Quality Assurance (QA) program as exemplified by deficiencies in construction QA related to more than one work activity (e.g., structural, piping, electrical, foundations). These deficiencies normally involve the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits and normally involve multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation; or

2. A structure or system that is completed in such a manner that it could have an adverse effect on the safety of operations.

C. Severity Level III—Violations involving for example:

1. A deficiency in a licensee QA program for construction related to a single work activity (e.g., structural, piping, electrical or foundations). This significant deficiency normally involves the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits, and normally involves multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation;

2. A failure to confirm the design safety requirements of a structure or system as a result of inadequate preoperational test program implementation; or

3. A failure to make a required 10 CFR 50.55(e) report.

D. Severity Level IV—Violations involving failure to meet regulatory requirements including one or more Quality Assurance Criterion not amounting to Severity Level I, II, or III violations that have more than minor safety or environmental significance.

Supplement III—Safeguards

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of safeguards.

A. Severity Level I—Violations involving for example:

1. An act of radiological sabotage in which the security system did not function as required and, as a result of the failure, there was a significant event, such as:

(a) A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications, was exceeded;

(b) A system designed to prevent or mitigate a serious safety event was not able to perform its intended safety function when actually called upon to work; or

(c) An accidental criticality occurred;

2. The theft, loss, or diversion of a formula quantity [14] of special nuclear material (SNM); or

3. Actual unauthorized production of a formula quantity of SNM.

B. Severity Level II—Violations involving for example:

1. The entry of an unauthorized individual [15] who represents a threat into a vital area [16] from outside the protected area;

2. The theft, loss or diversion of SNM of moderate strategic significance [17] in which the security system did not function as required; or

3. Actual unauthorized production of SNM.

C. Severity Level III—Violations involving for example:

1. A failure or inability to control access through established systems or procedures, such that an unauthorized individual (i.e., not authorized unescorted access to protected area) could easily gain undetected access [18] into a vital area from outside the protected area;

2. A failure to conduct any search at the access control point or conducting an inadequate search that resulted in the introduction to the protected area of firearms, explosives, or incendiary devices and reasonable facsimiles thereof that could significantly assist radiological sabotage or theft of strategic SNM;

3. A failure, degradation, or other deficiency of the protected area intrusion detection or alarm assessment systems such that an unauthorized individual who represents a threat could predictably circumvent the system or defeat a specific zone with a high degree of confidence without insider knowledge, or other significant degradation of overall system capability;

4. A significant failure of the safeguards systems designed or used to prevent or detect the theft, loss, or diversion of strategic SNM;

5. A failure to protect or control classified or safeguards information considered to be significant while the information is outside the protected area and accessible to those not authorized access to the protected area;

6. A significant failure to respond to an event either in sufficient time to provide protection to vital equipment or strategic SNM, or with an adequate response force;

7. A failure to perform an appropriate evaluation or background investigation so that information relevant to the access determination was not obtained or considered and as a result a person, who would likely not have been granted access by the licensee, if the required investigation or evaluation had been performed, was granted access; or

8. A breakdown in the security program involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively reflect a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. Severity Level IV—Violations involving for example:

1. A failure or inability to control access such that an unauthorized individual (i.e., authorized to protected area but not to vital area) could easily gain undetected access into a vital area from inside the protected area or into a controlled access area;

2. A failure to respond to a suspected event in either a timely manner or with an adequate response force;

3. A failure to implement 10 CFR Parts 25 and 95 with respect to the information addressed under Section 142 of the Act, and the NRC approved security plan relevant to those parts;

4. A failure to make, maintain, or provide log entries in accordance with 10 CFR 73.71 (c) and (d), where the omitted information (i) is not otherwise available in easily retrievable records, and (ii) significantly contributes to the ability of either the NRC or the licensee to identify a programmatic breakdown;

5. A failure to conduct a proper search at the access control point;

6. A failure to properly secure or protect classified or safeguards information inside the protected area which could assist an individual in an act of radiological sabotage or theft of strategic SNM where the information was not removed from the protected area;

7. A failure to control access such that an opportunity exists that could allow unauthorized and undetected access into the protected area but which was neither easily or likely to be exploitable;

8. A failure to conduct an adequate search at the exit from a material access area;

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[14] See 10 CFR 73.2 for the definition of ''formula quantity.''

[15] The term ''unauthorized individual'' as used in this supplement means someone who was not authorized for entrance into the area in question, or not authorized to enter in the manner entered.

[16] The phrase ''vital area'' as used in this supplement includes vital areas and material access areas.

[17] See 10 CFR 73.2 for the definition of ''special nuclear material of moderate strategic significance.''

[18] In determining whether access can be easily gained, factors such as predictability, identifiability, and ease of passage should be considered.

9. A theft or loss of SNM of low strategic significance that was not detected within the time period specified in the security plan, other relevant document, or regulation; or

10. Other violations that have more than minor safeguards significance.

Supplement IV—Health Physics (10 CFR Part 20)

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of health physics, 10 CFR Part 20.[19]

A. Severity Level I - Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 25 rems total effective dose equivalent, 75 rems to the lens of the eye, or 250 rads to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 2.5 rems total effective dose equivalent;

3. A radiation exposure during any year of a minor in excess of 2.5 rems total effective dose equivalent, 7.5 rems to the lens of the eye, or 25 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. An annual exposure of a member of the public in excess of 1.0 rem total effective dose equivalent;

5. A release of radioactive material to an unrestricted area at concentrations in excess of 50 times the limits for members of the public as described in 10 CFR 20.1302(b)(2)(i); or

6. Disposal of licensed material in quantities or concentrations in excess of 10 times the limits of 10 CFR 20.2003.

B. Severity Level II—Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 10 rems total effective dose equivalent, 30 rems to the lens of the eye, or 100 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 1.0 rem total effective dose equivalent;

3. A radiation exposure during any year of a minor in excess of 1 rem total effective dose equivalent; 3.0 rems to the lens of the eye, or 10 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. An annual exposure of a member of the public in excess of 0.5 rem total effective dose equivalent;

5. A release of radioactive material to an unrestricted area at concentrations in excess of 10 times the limits for members of the public as described in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

6. Disposal of licensed material in quantities or concentrations in excess of five times the limits of 10 CFR 20.2003; or

7. A failure to make an immediate notification as required by 10 CFR 20.2202 (a)(1) or (a)(2).

C. Severity Level III—Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 5 rems total effective dose equivalent, 15 rems to the lens of the eye, or 50 rems to the skin of the whole body or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 0.5 rem total effective dose equivalent (except when doses are in accordance with the provisions of Section 20.1208(d));

3. A radiation exposure during any year of a minor in excess of 0.5 rem total effective dose equivalent; 1.5 rems to the lens of the eye, or 5 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. A worker exposure above regulatory limits when such exposure reflects a programmatic (rather than an isolated) weakness in the radiation control program;

5. An annual exposure of a member of the public in excess of 0.1 rem total effective dose equivalent (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

6. A release of radioactive material to an unrestricted area at concentrations in excess of two times the effluent concentration limits referenced in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

7. A failure to make a 24-hour notification required by 10 CFR 20.2202(b) or an immediate notification required by 10 CFR 20.2201(a)(1)(i);

8. A substantial potential for exposures or releases in excess of the applicable limits in 10 CFR Part 20 Sections 20.1001–20.2401 whether or not an exposure or release occurs;

9. Disposal of licensed material not covered in Severity Levels I or II;

10. A release for unrestricted use of contaminated or radioactive material or equipment that poses a realistic potential for exposure of the public to levels or doses exceeding the annual dose limits for members of the public, or that reflects a programmatic (rather than an isolated) weakness in the radiation control program;

11. Conduct of licensee activities by a technically unqualified person;

12. A significant failure to control licensed material; or

13. A breakdown in the radiation safety program involving a number of violations that are related (or, if isolated, that are recurring) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. Severity Level IV—Violations involving for example:

1. Exposures in excess of the limits of 10 CFR 20.1201, 20.1207, or 20.1208 not constituting Severity Level I, II, or III violations;

2. A release of radioactive material to an unrestricted area at concentrations in excess of the limits for members of the public as referenced in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

3. A radiation dose rate in an unrestricted or controlled area in excess of 0.002 rem in any 1 hour (2 millirem/hour) or 50 millirems in a year;

4. Failure to maintain and implement radiation programs to keep radiation exposures as low as is reasonably achievable;

5. Doses to a member of the public in excess of any EPA generally applicable environmental radiation standards, such as 40 CFR Part 190;

6. A failure to make the 30-day notification required by 10 CFR 20.2201(a)(1)(ii) or 20.2203(a);

7. A failure to make a timely written report as required by 10 CFR 20.2201(b), 20.2204, or 20.2206; or

8. Any other matter that has more than a minor safety, health, or environmental significance.

Supplement V—Transportation

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations

[19] Personnel overexposures and associated violations incurred during a life-saving or other emergency response effort will be treated on a case-by-case basis.

in the area of NRC transportation requirements [20].

A. Severity Level I—Violations involving for example:

1. Failure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that the material caused a radiation exposure to a member of the public and there was clear potential for the public to receive more than .1 rem to the whole body;

2. Surface contamination in excess of 50 times the NRC limit; or

3. External radiation levels in excess of 10 times the NRC limit.

B. Severity Level II—Violations involving for example:

1. Failure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that there was a clear potential for the member of the public to receive more than .1 rem to the whole body;

2. Surface contamination in excess of 10, but not more than 50 times the NRC limit;

3. External radiation levels in excess of five, but not more than 10 times the NRC limit; or

4. A failure to make required initial notifications associated with Severity Level I or II violations.

C. Severity Level III—Violations involving for example:

1. Surface contamination in excess of five but not more than 10 times the NRC limit;

2. External radiation in excess of one but not more than five times the NRC limit;

3. Any noncompliance with labeling, placarding, shipping paper, packaging, loading, or other requirements that could reasonably result in the following:

(a) A significant failure to identify the type, quantity, or form of material;

(b) A failure of the carrier or recipient to exercise adequate controls; or

(c) A substantial potential for either personnel exposure or contamination above regulatory limits or improper transfer of material;

4. A failure to make required initial notification associated with Severity Level III violations; or

5. A breakdown in the licensee's program for the transportation of licensed material involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively reflect a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. Severity Level IV—Violations involving for example:

1. A breach of package integrity without external radiation levels exceeding the NRC limit or without contamination levels exceeding five times the NRC limits;

2. Surface contamination in excess of but not more than five times the NRC limit;

3. A failure to register as an authorized user of an NRC-Certified Transport package;

4. A noncompliance with shipping papers, marking, labeling, placarding, packaging or loading not amounting to a Severity Level I, II, or III violation;

5. A failure to demonstrate that packages for special form radioactive material meets applicable regulatory requirements;

6. A failure to demonstrate that packages meet DOT Specifications for 7A Type A packages; or

7. Other violations that have more than minor safety or environmental significance.

Supplement VI—Fuel Cycle and Materials Operations

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of fuel cycle and materials operations.

A. Severity Level I—Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed 10 times the limits specified in the license;

2. A system designed to prevent or mitigate a serious safety event not being operable when actually required to perform its design function;

3. A nuclear criticality accident; or

4. A failure to follow the procedures of the quality management program, required by Section 35.32, that results in a death or serious injury (e.g., substantial organ impairment) to a patient.

B. Severity Level II—Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed five times the limits specified in the license;

2. A system designed to prevent or mitigate a serious safety event being inoperable; or

3. A substantial programmatic failure in the implementation of the quality management program required by 10 CFR 35.32 that results in a misadministration.

C. Severity Level III—Violations involving for example:

1. A failure to control access to licensed materials for radiation purposes as specified by NRC requirements;

2. Possession or use of unauthorized equipment or materials in the conduct of licensee activities which degrades safety;

3. Use of radioactive material on humans where such use is not authorized;

4. Conduct of licensed activities by a technically unqualified person;

5. Radiation levels, contamination levels, or releases that exceed the limits specified in the license;

6. Substantial failure to implement the quality management program as required by Section 35.32 that does not result in a misadministration; failure to report a misadministration; or programmatic weakness in the implementation of the quality management program that results in a misadministration.

7. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities;

8. A failure, during radiographic operations, to have present or to use radiographic equipment, radiation survey instruments, and/or personnel monitoring devices as required by 10 CFR Part 34;

9. A failure to submit an NRC Form 241 in accordance with the requirements in Section 150.20 of 10 CFR Part 150;

10. A failure to receive required NRC approval prior to the implementation of a change in licensed activities that has radiological or programmatic significance, such as, a change in ownership; lack of an RSO or replacement of an RSO with an unqualified individual; a change in the location where licensed activities are being conducted, or where licensed material is being stored where the new facilities do not meet safety guidelines; or a change in the quantity or type of radioactive material being processed or used that has radiological significance; or

11. A significant failure to meet decommissioning requirements including a failure to notify the NRC as required by regulation or license condition, substantial failure to meet decommissioning standards, failure to conduct and/or complete decommissioning activities in

[20] Some transportation requirements are applied to more than one licensee involved in the same activity such as a shipper and a carrier. When a violation of such a requirement occurs, enforcement action will be directed against the responsible licensee which, under the circumstances of the case, may be one or more of the licensees involved.

accordance with regulation or license condition, or failure to meet required schedules without adequate justification.

D. Severity Level IV—Violations involving for example:

1. A failure to maintain patients hospitalized who have cobalt-60, cesium-137, or iridium-192 implants or to conduct required leakage or contamination tests, or to use properly calibrated equipment;

2. Other violations that have more than minor safety or environmental significance; or

3. Failure to follow the quality management program, including procedures, whether or not a misadministration occurs, provided the failures are isolated, do not demonstrate a programmatic weakness in the implementation of the QM program, and have limited consequences if a misadministration is involved; failure to conduct the required program review; or failure to take corrective actions as required by Section 35.32; or

4. A failure to keep the records required by Sections 35.32 or 35.33.

Supplement VII—Miscellaneous Matters

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations involving miscellaneous matters.

A. Severity Level I—Violations involving for example:

1. Inaccurate or incomplete information [21] that is provided to the NRC (a) deliberately with the knowledge of a licensee official that the information is incomplete or inaccurate, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as an immediate order required by the public health and safety.

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee that is (a) incomplete or inaccurate because of falsification by or with the knowledge of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as an immediate order required by public health and safety considerations;

3. Information that the licensee has identified as having significant implications for public health and safety or the common defense and security (''significant information identified by a licensee'') and is deliberately withheld from the Commission;

4. Action by senior corporate management in violation of 10 CFR 50.7 or similar regulations against an employee;

5. A knowing and intentional failure to provide the notice required by 10 CFR Part 21; or

6. A failure to substantially implement the required fitness-for-duty program.[22]

B. Severity Level II—Violations involving for example:

1. Inaccurate or incomplete information that is provided to the NRC (a) by a licensee official because of careless disregard for the completeness or accuracy of the information, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee which is (a) incomplete or inaccurate because of careless disregard for the accuracy of the information on the part of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

3. ''Significant information identified by a licensee'' and not provided to the Commission because of careless disregard on the part of a licensee official;

4. An action by plant management above first-line supervision in violation of 10 CFR 50.7 or similar regulations against an employee;

5. A failure to provide the notice required by 10 CFR Part 21;

6. A failure to remove an individual from unescorted access who has been involved in the sale, use, or possession of illegal drugs within the protected area or take action for on duty misuse of alcohol, prescription drugs, or over-the-counter drugs;

7. A failure to take reasonable action when observed behavior within the protected area or credible information concerning activities within the protected area indicates possible unfitness for duty based on drug or alcohol use;

8. A deliberate failure of the licensee's Employee Assistance Program (EAP) to notify licensee's management when EAP's staff is aware that an individual's condition may adversely affect safety related activities; or

9. The failure of licensee management to take effective action in correcting a hostile work environment.

C. Severity Level III—Violations involving for example:

1. Incomplete or inaccurate information that is provided to the NRC (a) because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee that is (a) incomplete or inaccurate because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

3. A failure to provide ''significant information identified by a licensee'' to the Commission and not amounting to a Severity Level I or II violation;

4. An action by first-line supervision in violation of 10 CFR 50.7 or similar regulations against an employee;

5. An inadequate review or failure to review such that, if an appropriate review had been made as required, a 10 CFR Part 21 report would have been made;

6. A failure to complete a suitable inquiry on the basis of 10 CFR Part 26, keep records concerning the denial of access, or respond to inquiries concerning denials of access so that, as a result of the failure, a person previously denied access for fitness-for-duty reasons was improperly granted access;

7. A failure to take the required action for a person confirmed to have been tested positive for illegal drug use or take action for onsite alcohol use; not amounting to a Severity Level II violation;

8. A failure to assure, as required, that contractors or vendors have an effective fitness-for-duty program;

9. A breakdown in the fitness-for-duty program involving a number of violations of the basic elements of the fitness-for-duty program that collectively reflect a significant lack of attention or carelessness towards

[21] In applying the examples in this supplement regarding inaccurate or incomplete information and records, reference should also be made to the guidance in Section IX, ''Inaccurate and Incomplete Information,'' and to the definition of ''licensee official'' contained in Section IV.C.

[22] The example for violations for fitness-for-duty relate to violations of 10 CFR Part 26.

meeting the objectives of 10 CFR 26.10; or

10. Threats of discrimination or restrictive agreements which are violations under NRC regulations such as 10 CFR 50.7(f).

D. Severity Level IV—Violations involving for example:

1. Incomplete or inaccurate information of more than minor significance that is provided to the NRC but not amounting to a Severity Level I, II, or III violation;

2. Information that the NRC requires be kept by a licensee and that is incomplete or inaccurate and of more than minor significance but not amounting to a Severity Level I, II, or III violation;

3. An inadequate review or failure to review under 10 CFR Part 21 or other procedural violations associated with 10 CFR Part 21 with more than minor safety significance;

4. Violations of the requirements of Part 26 of more than minor significance;

5. A failure to report acts of licensed operators or supervisors pursuant to 10 CFR 26.73; or

6. Discrimination cases which, in themselves, do not warrant a Severity Level III categorization.

Supplement VIII—Emergency Preparedness

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of emergency preparedness. It should be noted that citations are not normally made for violations involving emergency preparedness occurring during emergency exercises. However, where exercises reveal (i) training, procedural, or repetitive failures for which corrective actions have not been taken, (ii) an overall concern regarding the licensee's ability to implement its plan in a manner that adequately protects public health and safety, or (iii) poor self critiques of the licensee's exercises, enforcement action may be appropriate.

A. Severity Level I—Violations involving for example:

In a general emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff).

B. Severity Level II—Violations involving for example:

1. In a site emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff); or

2. A licensee failure to meet or implement one emergency planning standard involving assessment or notification.

C. Severity Level III—Violations involving for example:

1. In an alert, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff);

2. A licensee failure to meet or implement more than one emergency planning standard involving assessment or notification; or

3. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. Severity Level IV—Violations involving for example:

A licensee failure to meet or implement any emergency planning standard or requirement not directly related to assessment and notification.

Dated at Rockville, Maryland, this 23rd day of June 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–15952 Filed 6–29–95; 8:45 am]

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Friday
June 30, 1995

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species; American Peregrine Falcon; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Advance Notice of a Proposal To Remove the American Peregrine Falcon From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of a proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is reviewing the status of the American peregrine falcon (*Falco peregrinus anatum*), currently classified as endangered under the U.S. Endangered Species Act. Data currently on file with the Service indicate that this subspecies has recovered following restrictions on the use of organochlorine pesticides in the United States and Canada and because of management activities including the reintroduction of captive-bred peregrine falcons. Therefore, the Service intends to propose removal of the subspecies from the list of endangered and threatened wildlife and the critical habitat designation. The Service will also propose to remove the similarity of appearance provision that currently exists for all free-flying *Falco peregrinus* within the 48 conterminous States. Protection provided to American peregrine falcons by the Migratory Bird Treaty Act will not be affected. To ensure that the Service's proposal is based on the best available scientific information, the Service seeks data and comments from the public.

DATES: Comments from all interested parties must be received by August 29, 1995 to ensure consideration in the proposed rule.

ADDRESSES: Comments and other materials concerning this notice should be sent to Judy Hohman, Acting Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Mesta at the above address (Phone: 805/644–1766).

SUPPLEMENTARY INFORMATION:

Background

The American peregrine falcon (*Falco peregrinus anatum*) occurs throughout much of North America, from the subarctic boreal forests of Canada and Alaska south to Mexico. It nests from central Alaska, central Yukon Territory, and northern Alberta and Saskatchewan, east to the Maritimes and south (excluding coastal areas north of the Columbia River in Washington and British Columbia) throughout Canada and the United States to Baja California, Sonora, and the highlands of central Mexico. The central Canadian provinces of Saskatchewan and Manitoba, and the central United States, including North and South Dakota, Nebraska, Kansas, Oklahoma, and Texas outside of Trans-Pecos, have historically contained relatively few nesting American peregrine falcons. Thus, the plains area of the continent effectively separates the more suitable nesting habitat and historically dense nesting areas of temperate eastern and western North America. Birds that nest in subarctic areas generally winter in South America, while those that nest at lower latitudes exhibit variable migratory behavior or are nonmigratory (Yates *et al.* 1988).

Peregrine falcons declined precipitously in North America following World War II (U.S. Fish and Wildlife, 1993). Research implicated organochlorine pesticides, particularly the pesticide DDT (dichloro diphenyl trichloroethane) applied in the United States and Canada during this same period as causing the decline (for a review, see Risebrough and Peakall 1988). Use of these chemicals peaked in the 1950's and early 1960's and continued through the early 1970's. Organochlorines can affect peregrine falcons either by causing direct mortality or by adversely affecting reproduction by causing egg breakage, addling, hatching failure, and abnormal reproductive behavior by the parent birds (Risebrough and Peakall 1988). DDE, a metabolite of DDT, prevents normal calcium deposition during eggshell formation, resulting in thin-shelled eggs that are susceptible to breakage during incubation.

During the period of DDT use in North America, shell thinning and nesting failures were widespread in peregrine falcons, and in some areas successful reproduction virtually ceased (Hickey 1969). As a result, there was a rapid and significant decline in the number of peregrine falcons in many areas of North America. The degree of exposure to these pesticides varied by region, and peregrine falcon numbers in more contaminated areas suffered greater declines. Those that nested outside of agricultural and forested areas where DDT was heavily used were affected less, although some individuals wintered in areas of pesticide use and presumably all individuals ate some migratory prey containing organochlorines (for reviews, see Hickey 1969; Kiff 1988). Peregrine falcons nesting in the agricultural and forested areas east of the Mississippi River in the United States and in eastern Canada south of the boreal forest were the most heavily contaminated and were essentially extirpated by the mid-1960's (Berger et al. 1969).

Due to population declines of American peregrine falcons, the Service, in 1970, listed this subspecies as endangered under the Endangered Species Conservation Act of 1969 (P.L. 91–135, 83 Stat. 275). American peregrine falcons were included in the list of threatened and endangered foreign species on June 2, 1970 (35 FR 8495), and were included in the United States list of endangered and threatened species on October 13, 1970 (35 FR 16047). The subspecies was subsequently listed under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Recovery Implementation

The most significant event in the recovery of the peregrine falcon was the restriction placed on the use of organochlorine pesticides. Use of DDT was restricted in Canada in 1970 and in the United States in 1972 (37 FR 13369, July 7, 1972). Restrictions that controlled the use of aldrin and dieldrin were imposed in the United States in 1974 (39 FR 37246, October 18, 1974). Since implementation of these restrictions, residues of the pesticides have significantly decreased in many regions where they were formerly used. Consequently, reproductive rates in most surviving peregrine falcon populations in North America improved, and numbers began to increase (Kiff 1988).

Section 4(f) of the Act directs the Service to develop and implement recovery plans for listed species. Recovery teams produced four regional recovery plans for the American peregrine falcon in the United States. In addition, the Canadian Wildlife Service published an *Anatum* Peregrine Falcon Recovery Plan (Erickson et. al. 1988) for American peregrine falcons in Canada. No recovery plan or recovery objectives were established for Mexico.

Several of the recovery plans called for captive-rearing and release of falcons in several regions of North America. In the eastern United States, where American peregrines were extirpated, the initial objective was to reestablish the peregrine through the release of

offspring from a variety of wild stocks. Peregrine falcons were raised in captivity from parents of various subspecies, including subspecies then listed as endangered (*anatum, tundrius, peregrinus*), unlisted subspecies (*pealei, brookei*, etc.), and combinations thereof. The first experimental releases of captive-produced young occurred in 1974 and 1975 in the United States. Later, reintroduction was also pursued in eastern Canada, but breeding stock was limited to pure *Falco peregrinus anatum*. Because the birds released into the eastern United States were readily identifiable as peregrine falcons, but were not readily identifiable as to subspecies or genetic background, enforcement of the taking prohibitions of the Act for listed subspecies was a problem. The Service found it difficult to prosecute under section 9 of the Act for the take of a listed peregrine falcon because the released stocks of listed, unlisted, and mixed-parentage offspring were almost indistinguishable. To ensure the protection from illegal take of American and arctic (*F. p. tundrius*) peregrine falcons that may be nesting, migrating, or wintering in the lower 48 States, the Service designated any free-flying peregrine (*Falco peregrinus*) found within the lower 48 States as Endangered due to Similarity of Appearance in accordance with section 4(e) of the Act (49 FR 10520, March 20, 1984), thereby extending the taking prohibitions of section 9 to these birds.

In contrast to eastern populations, small numbers of American peregrine falcons in western North American survived the pesticide era and all birds released to augment wild populations were pure *anatum* subspecies, maintaining the genetic integrity of the subspecies. In Alaska and northwest Canada, populations were locally depressed but enough individuals survived the pesticide era that populations began to expand without the need for release of captive-bred falcons. Likewise, in the southwest United States, very few captive-bred birds were released, and populations recovered naturally as a result of restrictions on the use of organochlorine pesticides. In southwest Canada, the northern Rocky Mountain States, and the Pacific coast States, however, local populations were greatly depressed or extirpated, and over 3400 young American peregrine falcons were released to promote recovery in those areas (Enderson *et al., in litt.* 1995).

Recovery Status

Population growth was noted in the late 1970's in Alaska (Ambrose *et al.* 1988a) and by 1980 in many other areas (Enderson *et al., in litt.* 1995). Although the rate of recovery varied somewhat among regions, local populations throughout North America have increased in size, and positive trends in all areas suggest that a very large and extensive recovery of American peregrine falcons has taken place. Following is a summary of the status of American peregrine falcons in the five recovery regions.

Alaskan Recovery Plan (1982)—Recovery objectives are (1) to establish a minimum of 28 nesting pairs in two specified study areas (the upper Yukon and Tanana Rivers), (2) produce an average of 1.8 young per territorial pair per year (yg/pr), (3) achieve an average organochlorine concentration in eggs of less than 5 ppm (parts per million, wet weight basis) DDE, and (4) achieve eggshell thinning averaging no more than 10 percent thinner than pre-DDT era eggshells. These objectives were to be attained for 5 years before reclassifying to threatened status and an additional 5 years before delisting.

In 1994, 69 nesting pairs were present in the two study areas, and biologists estimate that at least 300 pairs currently nest in Alaska (R.E. Ambrose, pers. comm., 1995). Productivity surpassed the objective for the 14th year in 1994. Average DDE residues decreased from 17.0 ppm in 1967 to 4.2 ppm in 1991 (Ambrose *et al.* 1988b). It is now apparent that the 5 ppm objective was very conservative because normal reproduction occurred for several years before the average concentration declined to 5 ppm. Eggshells were estimated to be as much as 20–22 percent thinner statewide than pre-DDT era shells collected in the mid-1960's. Although the degree of thinning has gradually decreased over time, shells collected in interior Alaska still average 12.5 percent thinner than pre-DDT era shells, but reproduction has been sufficient to allow consistent population growth since the late 1970's. Therefore, the objective for eggshell thinning levels also may be overly conservative.

Canadian Recovery Plan (1988)—The *Anatum* Peregrine Falcon Recovery Plan for Canada divides the historical range of the American peregrine falcon throughout Canada into three regions subdivided into nine zones. The zones are (1) Maritime, (2) Great Lakes, (3) Prairies, (4) Mackenzie River Valley, (5) Northern Mountains, (6) Southern Mountains, (7) Eastern Mackenzie Watershed, (8) Western Canadian Shield, and (9) Eastern Canadian Shield. The objectives of the plan are (1) to establish by 1992 a minimum of 10 territorial pairs in each of zones 1 to 6, and (2) to establish by 1997 in each of 5 of these 6 zones a minimum of 10 pairs naturally fledging 15 or more young annually, measured as a 5-year average commencing in 1993. No recovery goals were established for zones 7, 8, and 9.

In zones 3 through 6 in western and west central Canada, 206 pairs were found between 1990 and 1993, with minimum targets achieved in each zone. In east central and eastern Canada, the goal of 10 territorial pairs has been surpassed in zone 1, the Maritime, but has not apparently been achieved for zone 2, the Great Lakes. Both captive releases and natural recruitment have contributed to the current number of pairs. An assessment of productivity in these populations will not be conducted until 1997. However, based on current population size and productivity, with the possible exceptions of zones 2 and 3, it is likely that this objective will be met by 1997. It is unclear whether or not the second productivity-based goal has been met for zone 1. In summary, it appears the goal of 10 territorial pairs has been achieved for 5 of the 6 recovery zones.

Pacific Coast (U.S.) Recovery Plan (1982)—This plan recommends that delisting be considered when (1) 185 wild, self-sustaining pairs are established with the following distribution: California-120, Oregon-30, Washington-30, Nevada-5; and (2) fledging success averages 1.5 yg/pr for a 5-year period.

The current Pacific population of American peregrine falcon totals approximately 224 pairs, and the State-specific objectives for number of pairs have been met. Although close, productivity objectives have not been met throughout the Pacific population; however, reproduction has been sufficient to maintain a positive population growth. The release of captive bred American peregrines into this population ceased in 1992, and the effect of releases on population growth and stability in this region is not yet known. However, if the current population level is maintained or continues to increase, the population could be considered self-sustaining. Current reproduction supports an expanding population despite high organochlorine residue concentrations and associated eggshell thinning in some areas.

Rocky Mountain/Southwest Population Recovery Plan (revised 1984)—The objectives for reclassification are (1) a minimum of 183 breeding pairs with the following distribution: Arizona 46, Colorado 31, Idaho 17, Montana 20, Nebraska 1, New Mexico 23, North Dakota—1, South

Dakota—1, Texas—8, Utah—21, and Wyoming 14; (2) average production of 1.25 yg/pr without manipulation; and (3) eggshell thickness within 10 percent of pre-DDT eggshells for a 5-year span. When these objectives are reached or significant new data are obtained, the objectives and species classification would be reassessed.

Based on 1994 surveys, the current Rocky Mountain/Southwest population consists of 559 breeding pairs, surpassing this recovery objective by 376 pairs. With the exception of Montana, Idaho, Nebraska, and North and South Dakota, all States within the Rocky Mountain/Southwest population have met their specific recovery goals for breeding pairs. Although much of this increase is undoubtedly attributable to natural growth, a substantial amount also resulted from releases of captive bred young, and an increased survey effort, and a gradual increase in the number of breeding areas that have been checked for the presence of peregrines. The second objective of 1.25 yg/pr for 5 years has not been met in all States, but the current reproductive level has been sufficient to support considerable population growth. Based on degree of recovery achieved and a general trend toward thicker eggshells, the original eggshell thickness objective appears unnecessary for the recovery.

Eastern (U.S.) Population Recovery Plan (1979; revised 1985 and 1991)—This plan reflects some of the earliest scientific recommendations regarding peregrine falcon recovery through reintroduction of captive bred offspring. Release of progeny of various listed and unlisted subspecies, and combinations thereof, commenced in the eastern United States in 1974 and 1975. The current plan indicates that the peregrine should be considered recovered when a minimum of 20–25 nesting pairs are established in each of five recovery units and are sustained for a minimum of 3 years, and, overall, a minimum of 175–200 pairs demonstrate successful, sustained nesting. The five recovery units are (1) Mid-Atlantic Coast, (2) Northern New York and New England, (3) Southern Appalachians, (4) Great Lakes, and (5) Southern New England/Central Appalachians.

Substantial progress has been made toward achieving the recovery criteria, with three of the five recovery units (Mid Atlantic Coast, Northern New York, and Great Lakes) having surpassed the identified target of 20–25 nesting pairs for 3 years. The remaining two units—the Southern Appalachians and southern New England/Central Appalachians have not done so (10 pairs and 5 pairs respectively, located in 1994), and are unlikely to reach their goal in the near future due to great horned owl (*Bubo virginianus*) predation and other factors. Overall, in excess of 150 pairs have established nesting territories in the five units, and the recovery target of 175–200 pairs will likely be reached by 1996 or 1997 (M. Amaral, *in litt.*, 1995).

Mexico—None of the recovery plans written for peregrine falcons in North America established recovery criteria for American peregrine falcons that nest in Mexico. Furthermore, there is very little historical or recent information on peregrine falcons in Mexico with which to accurately assess current status in this area. Most of the research that has been conducted took place on the Baja Peninsula and in the Gulf of California. It is likely the status of the subpopulation is similar to that of the subpopulation occupying similar habitat in nearby Arizona (G. Hunt, pers. comm., 1995). There are no recent data known to the Service that indicate local American peregrine falcon populations in Mexico are declining, are imperiled by organochlorine pesticides, or have not recovered in recent years similarly to local populations in the United States and Canada.

Summary

In accordance with 50 CFR 424.11(d), a species may be delisted if the best scientific and commercial data available substantiate that neither endangered nor threatened status is appropriate because the species is recovered, extinct, or the original data for classification of the species were in error, and that the five factors presented in section 4(a)(1) of the Act are no longer applicable to the species.

Exposure to organochlorine pesticides caused drastic population declines in American peregrine falcons. Following restrictions on the use of organochlorines in the United States and Canada, residues in eggs declined and reproduction rates improved. Improved reproduction, combined with the release of thousands of captive-reared young, has allowed the American peregrine falcon to recover. Pesticide residues, reproductive rates, and the rate of recovery have varied among regions within the vast range of the subspecies. In some areas, such as portions of California, the lingering effects of pesticides have caused reproductive rates to remain low, and recovery may not yet be complete. Point source contamination may cause continued reproductive problems in these areas in California, and the recovery in these areas may not be complete for many years. In eastern and southwestern Canada, the rate of recovery, or onset of recovery, apparently lagged behind most other areas within the range of this population segment; but, recent trends suggest that historical nest sites will continue to be gradually recolonized in this area. Although the recovery of the American peregrine falcon is not complete throughout all parts of the historical range, those areas in which recovery has been exceptionally slow comprise a small portion of the range of the subspecies. Furthermore, evidence collected in recent years shows that a combination of lingering residues of organochlorines in North America and contamination resulting from the continued use of organochlorines in Latin America has not prevented a widespread and substantial recovery of American peregrine falcons. The Service concludes, therefore, that the continued existence of American peregrine falcons is no longer threatened by exposure to organochlorine pesticides. The peregrine would remain protected by the Migratory Bird Treaty Act, which governs the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests.

Section 4(g)(1) of the Act requires that the Secretary of the Interior, through the Service, implement a monitoring program for at least 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. A monitoring plan for the American peregrine will be described in the proposed rule.

Public Comments Solicited

The Service intends for the forthcoming proposal to remove the American peregrine falcon from the Lists of Endangered and Threatened Wildlife to be based on complete and accurate information. Therefore, the Service hereby solicits data, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party, concerning such a proposal. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this subspecies;

(2) additional information concerning the range, distribution, and population size of this subspecies;

(3) current or planned activities in the range of this subspecies and their possible impacts on this subspecies;

(4) data on population trends in Mexico;

(5) information and comments on the potential impacts of falconry upon peregrine falcon populations; and

(6) information and comments pertaining to a monitoring plan.

References Cited

A complete list of all references cited herein is available upon request from the Ventura Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are Robert Mesta, U.S. Fish and Wildlife Service, Ventura, Ecological Services Field Office (see ADDRESSES section), (805/644–1766), Ted Swem, U.S. Fish and Wildlife Service, Fairbanks Ecological Services Field Office, 1412 Airport Way, Fairbanks, Alaska 99701 (907/456–0441), and Susan Lawrence, U.S. Fish and Wildlife Service, Division of Endangered Species, Washington, D.C., 20240 (703/358–2105).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 23, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–16076 Filed 6–29–95; 8:45 am]

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Federal Register

Friday
June 30, 1995

Part V

Pension Benefit Guaranty Corporation

29 CFR Part 2627
Disclosure to Participants; Final Rule

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2627

RIN 1212–AA77

Disclosure to Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its regulations to implement a new notice requirement under section 4011 of the Employee Retirement Income Security Act of 1974, as amended by the Retirement Protection Act of 1994. Section 4011 requires plan administrators of certain underfunded plans to provide notice to plan participants and beneficiaries of the plan's funding status and the limits on the PBGC's guarantee.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Catherine B. Klion, Attorney, Office of the General Counsel, PBGC, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: On March 28, 1995, the PBGC published in the **Federal Register** (60 FR 16026) a proposed rule implementing a new notice requirement under section 4011 of ERISA, which was added by section 775 of the Retirement Protection Act of 1994 (subtitle F of title VII of the Uruguay Round Agreements Act, Pub. L. No. 103–465, 108 Stat. 4809 (1994)). Under section 4011, plan administrators of certain underfunded plans must provide notice to plan participants and beneficiaries of the plan's funding status and the limits on the PBGC's guarantee.

The proposed rule prescribes which plans are subject to the notice requirement, who is entitled to receive the notice, and the time, form, and manner of issuance of the notice. The proposed rule includes a model notice plan administrators could use.

The PBGC received 14 comments from plan sponsors, organizations representing participants and plan sponsors, and pension practitioners. PBGC has made changes in the final regulation pursuant to these comments.

Form of Notice

Some commenters questioned the rule limiting the items that could be in the Participant Notice. Some objected to the rule that additional information be in a document separate from the Participant Notice, and others suggested specific information they thought should be permitted to be part of the Participant Notice. The regulation (§ 2627.10(d)) allows a plan administrator to provide additional information with the Participant Notice. To allow the additional information to be in the same document as the Participant Notice would run counter to the Congressional purpose of making the Participant Notice clear, concise, and focused. The final rule does include in the Participant Notice some of the specific information suggested by commenters.

Commenters thought that certain information required in the Participant Notice might generate undue concerns about benefit availability and suggested ways to revise the notice. Congress mandated plan administrators to provide participants with information on underfunding and PBGC guarantees. To see that this information is provided without raising undue concerns, the PBGC has revised the model notice and certain requirements of the rule.

Three commenters objected to the requirement that the Participant Notice include information on funding waivers and missed contributions, noting that the information is not specified in section 4011 and is subject to other disclosure requirements. Information on funding waivers and missed contributions is relevant to participants' understanding of a plan's funding status.

One of these commenters suggested that these Participant Notice disclosure requirements be coordinated with the other disclosure requirements. The final rule clarifies and limits the Participant Notice disclosure requirements relating to funding waivers and missed contributions.

The final rule makes clear that minimum funding waivers that have been fully repaid as of the end of the prior plan year are not required to be included. A waiver will be treated as fully repaid before the end of the statutory amortization period only where the employer has made contributions in excess of the minimum funding requirements and the resulting credit balance is precluded from being used to satisfy future minimum funding requirements by a waiver condition or contractual obligation.

The final rule limits the circumstances in which participants must be informed of missed contributions to the type of circumstances in which notice to participants is required under section 101(d) of ERISA. For the Participant Notice, plan administrators must disclose missed contributions if (1) the plan had a funding deficiency at the end of any prior plan year (taking into account contributions made before the Participant Notice is issued and within the eight-and-one-half month grace period after the plan year), or (2) a quarterly contribution or other payment was overdue for more than 60 days. The plan administrator must inform participants if the missed payment has or has not been made and (if made) the date of the payment. Missed contributions for prior plan years that have previously been disclosed to participants must be included only if the contributions still have not been paid.

For example, assume that the last three quarterly payments for the 1995 calendar plan year (due July 15, 1995, October 15, 1995, and January 15, 1996) were missed, but paid on September 15, 1996, along with any remaining 1995 contributions needed to satisfy the minimum funding standard. The Participant Notice for the 1995 plan year, issued on November 15, 1995, would disclose the July 15 delinquency, but not the October 15 or January 15 delinquencies (because neither would then be overdue by more than 60 days). The Participant Notice for the 1996 plan year, issued on November 15, 1996, would not need to redisclose the July 15 delinquency (since it has been paid), but would need to disclose the October 15 and January 15 delinquencies unless they had previously been disclosed to participants under Title I of ERISA.

The Department of Labor has advised PBGC that, in the absence of final regulations implementing section 101(d) of ERISA (requiring notice of failure to meet minimum funding standards), it will treat a plan administrator that provides a Participant Notice as having satisfied section 101(d) with respect to any missed contributions identified in the Participant Notice.

The final regulation requires the Participant Notice to specify the date as of which the Notice Funding Percentage is determined (§ 2627.10(b)(2)). The PBGC expects many plans to determine the Notice Funding Percentage using data from the prior plan year because that will be the most current data available at the time the Participant Notice is issued.

One commenter objected to the requirement that the Participant Notice include, in addition to the name, address, and telephone number of the plan administrator, the name, address and telephone number of an individual who can answer questions about the plan's funding, pointing out that communicating information on plan funding orally would be burdensome and could lead to misunderstanding.

The final regulation eliminates the requirement that the plan administrator be identified in all cases, and allows the Participant Notice to identify any person(s) (including the plan administrator) who will provide further information about the plan's funding. The information need not be provided orally, and need not go beyond that required to be given under Title I of ERISA.

One commenter suggested a minimum type size. Rather than specifying a type size, the final regulation (§ 2627.10(a)) makes clear that the Participant Notice not only has to be understandable, but also readable (*e.g.*, in a sufficiently large type size). The final regulation (§ 2627.10(e)) also revises the foreign language requirements to make clear that in lieu of providing a notice of assistance in the applicable foreign language, plan administrators may provide the Participant Notice itself in that language.

Model Notice

One commenter suggested that the PBGC subject the model notice to a readability test. The model notice was subjected to readability tests and focus group review by workers and retirees. Based on the results of these reviews, the PBGC made changes to further simplify the model notice.

Some commenters read the model notice as requiring information that may not apply to particular plans and as limiting information on the maximum guaranteed benefit to ages 55 and 65. The final regulation revises the model notice so that plan administrators who wish to use it may tailor it to fit particular plans. With respect to the maximum guaranteed benefit, the final rule requires all plans to provide information for age 65 (the age on which PBGC guarantees are based). A plan that allows early retirement benefits must specify the maximum guaranteed benefit for at least one early retirement age. A plan that provides for normal retirement before age 65 must include the normal retirement age.

Manner of Issuance

Commenters both supported and opposed the requirement that the Participant Notice be in a separate document from the summary annual report. Supporters expressed concern that the information in the Participant Notice would be lost if combined with the summary annual report, while those opposing the requirement suggested that combining the two documents would be convenient or would reduce administrative costs. The regulation (§ 2627.9) allows plans to issue the Participant Notice with the summary annual report to minimize cost. However, combining the two documents could obscure the information in the Participant Notice. In making the disclosure provisions part of Title IV of ERISA, Congress clearly signalled that information on underfunding and PBGC guarantees not be entangled with other information.

One commenter addressed the requirement that the Participant Notice be issued by using measures reasonably calculated to ensure actual receipt. The commenter suggested incorporating the Department of Labor regulation on furnishing the summary annual report (29 CFR 2520.104b–1(b)(1)) verbatim in the final Participant Notice regulation. The examples specified in the DOL regulation, as well as any other methods that DOL determines are acceptable under its regulation, are acceptable for issuance of the Participant Notice. (Posting a notice of availability of the Participant Notice at worksite locations is not an acceptable method of issuance.) However, other methods of issuance may be acceptable for the Participant Notice.

One commenter urged that the final regulation specify that posting the Participant Notice on an electronic computer network does not satisfy the notice requirement because few retirees, and even fewer lower-income participants, have access to electronic mail. In certain limited circumstances, issuance by electronic mail to employees may be reasonably calculated to ensure actual receipt. However, issuance by electronic mail to recipients who may not have access to or familiarity with electronic mail or the ability to print out the notice easily would not be acceptable.

Mergers, Consolidations, and Spin-offs

In the proposed rule, the PBGC invited comments on how the Participant Notice requirement should apply where a plan has been involved in a merger, consolidation, or spinoff transaction since the prior plan year. No comments on this issue were received.

The final rule (§ 2627.6) requires plan administrators of plans involved in those transactions to apply the requirements of section 4011 and of this regulation in a reasonable manner to accomplish the statutory purpose of the Participant Notice. The PBGC may address what is a reasonable means to accomplish the statutory purpose in future guidance.

Miscellaneous Issues

Two commenters proposed that plans otherwise subject to the Participant Notice requirement should be exempt if they represent a minimal portion of the current liability of all of the contributing sponsor's defined benefit plans. Another commenter suggested that all small plans be exempt from the Participant Notice requirement. Participants in these underfunded plans have the same need for the information contained in the Participant Notice as do participants in other underfunded plans.

The PBGC received several comments supporting or opposing the requirement that the Participant Notice be issued to alternate payees not in pay status and employee organizations representing participants for purposes of collective bargaining. To ensure that the Participant Notice serves its intended purpose of providing timely and useful information to interested parties, the final rule retains the requirement that the Participant Notice be issued to alternate payees and unions. The regulation has been modified to make clear that an alternate payee is entitled to receive the Participant Notice only if an applicable qualified domestic relations order (as defined in section 206(d)(3) of ERISA) is on file with the plan.

One commenter wrote that the deadline for issuing the Participant Notice should be no later than seven months after the end of the preceding plan year so that participants will not have to wait as long for the information. The rules seek to strike a balance between meeting participants' need for timely information and minimizing burden on plan administrators. To that end, the PBGC is retaining its proposed time limit of two months after the deadline for filing the annual report for the prior plan year to enable plans to distribute the Participant Notice with the summary annual report. (The final rule specifies that the plan administrator may change the date of issuance from one plan year to the next, provided that the effect of any change is not to avoid disclosing a minimum funding waiver under § 2627.10(b)(5) or a missed contribution under § 2627.10(b)(6).)

That same commenter requested that the Department of Labor not treat a plan administrator as having complied with the requirement to disclose a plan's funding percentage in the summary annual report if the plan administrator provides the Participant Notice under section 4011 (*see* 60 FR 16027). The Department of Labor advises PBGC that it continues to believe that the duplicative reporting would impose an unnecessary burden on plan administrators.

The PBGC expects most plan administrators to provide the Participant Notice in compliance with this regulation. Any plan administrator who does not comply with this regulation may be assessed penalties under section 4071 of ERISA. If a plan administrator issues a Participant Notice for the 1995 plan year that meets the requirements of the proposed rule, the PBGC will not assess section 4071 penalties based on a failure to comply with any different requirements in the final rule.

E.O. 12866, the Regulatory Flexibility Act, and the Paperwork Reduction Act

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866 because the rule will not 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; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), sections 603 and 604 do not apply.

Small plans are exempt from the Participant Notice requirement for the 1995 plan year. For subsequent plan years, neither the cost of determining whether a plan is subject to the Participant Notice requirement nor the cost of preparing and issuing the Participant Notice is expected to be significant for a substantial number of small entities. The regulation contains special rules designed to simplify the Participant Notice requirement for small plans.

The Paperwork Reduction Act of 1995, which generally becomes effective on October 1, 1995, will apply to the disclosure requirements in this final rule. The PBGC intends in the near future to submit to the Office of Management and Budget a request for approval of these disclosure requirements and to publish in the **Federal Register** a notice advising the public of its request.

List of Subjects in 29 CFR Part 2627

Employee benefit plans, Pension Insurance, Pensions.

For the reasons set forth above, the PBGC is amending subchapter C, chapter XXVI of 29 CFR by adding a new part 2627 to read as follows:

Part 2627—DISCLOSURE TO PARTICIPANTS

Sec.

2627.1 Purpose and scope.
2627.2 Definitions.
2627.3 Notice requirement.
2627.4 Small plan rules.
2627.5 Exemption for new and newly-covered plans.
2627.6 Mergers, consolidations, and spinoffs.
2627.7 Persons entitled to notice.
2627.8 Time of notice.
2627.9 Manner of issuance of notice.
2627.10 Form of notice.
Appendix A to part 2627—Model participant notice.
Appendix B to part 2627—Table of maximum guaranteed benefits.

Authority: 29 U.S.C. 1302(b)(3), 1311.

§ 2627.1 Purpose and scope.

(a) *Purpose.* This part prescribes rules and procedures for complying with the requirements of section 4011 of the Act.

(b) *Scope.* This part applies for any plan year beginning on or after January 1, 1995, with respect to any single-employer plan that is covered by section 4021 of the Act.

§ 2627.2 Definitions.

For purposes of this part:

Act means the Employee Retirement Income Security Act of 1974, as amended.

Participant has the meaning in § 2617.2 of this chapter.

Participant Notice means the notice required pursuant to section 4011 of the Act and this part.

Plan administrator means the administrator, as defined in section 4001(a)(1) of the Act.

§ 2627.3 Notice requirement.

(a) *General.* Except as otherwise provided in this part, the plan administrator of a plan must provide a Participant Notice for a plan year if—

(1) A variable rate premium is payable for the plan under section 4006(a)(3)(E) of the Act and part 2610 of this chapter for that plan year; and

(2) The plan does not meet the Deficit Reduction Contribution (''DRC'') Exception Test in paragraph (b) of this section (which may be applied using the Small Plan DRC Exception Test rules in § 2627.4(b), where applicable) for that plan year or for the prior plan year.

(b) *DRC Exception Test*—(1) *Basic rule.* A plan meets the DRC Exception Test for a plan year if it is exempt from the requirements of section 302(d) of the Act for that plan year by reason of section 302(d)(9), without regard to the small plan exemption in section 302(d)(6)(A).

(2) *1994 plan year.* A plan satisfies the DRC Exception Test for the 1994 plan year if, for any two of the plan years beginning in 1992, 1993, and 1994 (whether or not consecutive), the plan satisfies any requirement of section 302(d)(9)(D)(i) of the Act.

(c) *Penalties for non-compliance.* If a plan administrator fails to provide a Participant Notice within the specified time limit or omits material information from a Participant Notice, the PBGC may assess a penalty under section 4071 of the Act of up to $1,000 a day for each day that the failure continues.

§ 2627.4 Small plan rules.

(a) *1995 plan year exemption.* A plan that is exempt from the requirements of section 302(d) of the Act for the 1994 or 1995 plan year by reason of section 302(d)(6)(A) is exempt from the Participant Notice requirement for the 1995 plan year.

(b) *Small Plan DRC Exception Test.* In determining whether the Participant Notice requirement applies for a plan year beginning after 1995, the plan administrator of a plan that is exempt from the requirements of section 302(d) of the Act by reason of section 302(d)(6)(A) for the plan year being tested may use any one or more of the following rules in determining whether the plan meets the DRC Exception Test for that plan year:

(1) *Use of Schedule B data.* For any plan year for which the plan is exempt from the requirements of section 302(d) of the Act by reason of section 302(d)(6)(A), provided both of the following adjustments are made—

(i) The market value of the plan's assets as of the beginning of the plan year (as required to be reported on Form 5500, Schedule B) may be substituted for the actuarial value of the plan's assets as of the valuation date; and

(ii) The plan's current liability for all participants' total benefits as of the beginning of the plan year (as required to be reported on Form 5500, Schedule B) may be substituted for the plan's current liability as of the valuation date.

(2) *Pre-1995 plan year 90 percent test.* A plan that is exempt from the requirements of section 302(d) of the Act for a pre-1995 plan year by reason

of section 302(d)(6)(A) satisfies the requirements of section 302(d)(9)(D)(i) for that pre-1995 plan year if the ratio of its assets to its current liability for that plan year is at least 90 percent. For this purpose, the plan's assets are valued without subtracting any credit balance under section 302(b) of the Act, and its current liability is determined using the highest interest rate allowable for the plan year under section 302(d)(7)(C).

(3) *Interest rate adjustment.* If the interest rate used to calculate current liability for a plan year is less than the highest rate allowable for the plan year under section 302(d)(7)(C) of the Act, the current liability may be reduced by one percent for each tenth of a percentage point by which the highest rate exceeds the rate so used.

§ 2627.5 Exemption for new and newly-covered plans.

A plan (other than a plan resulting from a consolidation or spinoff) is exempt from the Participant Notice requirement for the first plan year for which the plan must pay premiums under part 2610 of this chapter.

§ 2627.6 Mergers, consolidations, and spinoffs.

In the case of a plan involved in a merger, consolidation, or spinoff transaction that becomes effective during a plan year, the plan administrator shall apply the requirements of section 4011 of the Act and of this part for that plan year in a reasonable manner to ensure that the Participant Notice serves its statutory purpose.

§ 2627.7 Persons entitled to receive notice.

The plan administrator must provide the Participant Notice to each person who is a participant, a beneficiary of a deceased participant, an alternate payee under an applicable qualified domestic relations order (as defined in section 206(d)(3) of the Act), or an employee organization that represents any group of participants for purposes of collective bargaining. To determine who is a person that must receive the Participant Notice for a plan year, the plan administrator may select any date during the period beginning with the last day of the previous plan year and ending with the day on which the Participant Notice for the plan year is due, provided that a change in the date from one plan year to the next does not exclude a substantial number of participants and beneficiaries.

§ 2627.8 Time of notice.

The plan administrator must issue the Participant Notice for a plan year no later than two months after the deadline for filing the annual report for the previous plan year (*see* § 2520.104a–5(a)(2) of this title). The plan administrator may change the date of issuance from one plan year to the next, provided that the effect of any change is not to avoid disclosing a minimum funding waiver under § 2627.10(b)(5) or a missed contribution under § 2627.10(b)(6). When the President of the United States declares that, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the PBGC may extend the due date for providing the Participant Notice by up to 180 days.

§ 2627.9 Manner of issuance of notice.

The Participant Notice shall be issued by using measures reasonably calculated to ensure actual receipt by the persons entitled to receive it. It may be issued together with another document, such as the summary annual report required under section 104(b)(3) of the Act for the prior plan year, but must be in a separate document.

§ 2627.10 Form of notice.

(a) *General.* The Participant Notice (and any additional information under paragraph (d) of this section) shall be readable and written in a manner calculated to be understood by the average plan participant and not to mislead recipients. The Model Participant Notice in the Appendix to this part (when properly completed) is an example of a Participant Notice meeting the requirements of this section.

(b) *Content.* The Participant Notice for a plan year shall include—

(1) Identifying information (the name of the plan and the contributing sponsor, the employer identification number of the contributing sponsor, the plan number, the date (at least the month and year) on which the Participant Notice is issued, and the name, title, address and telephone number of the person(s) who can provide information about the plan's funding);

(2) A statement to the effect that the Participant Notice is required by law;

(3) The Notice Funding Percentage for the plan year, determined in accordance with paragraph (c) of this section, and the date as of which the Notice Funding Percentage is determined;

(4) A statement to the effect that—

(i) To pay pension benefits, the employer is required to contribute money to the plan over a period of years;

(ii) A plan's funding percentage does not take into consideration the financial strength of the employer; and

(iii) The employer, by law, must pay for all pension benefits, but benefits may be at risk if the employer faces a severe financial crisis or is in bankruptcy;

(5) If, for any of the five plan years immediately preceding the plan year, the plan has been granted a minimum funding waiver under section 303 of the Act that has not (as of the end of the prior plan year) been fully repaid, a statement identifying each such plan year and an explanation of a minimum funding waiver;

(6) For any payment subject to the requirements of this paragraph, a statement identifying the due date for the payment and noting that the payment has or has not been made and (if made) the date of the payment. Once participants have been notified (under this part or Title I of the Act) of a missed contribution that is subject to the requirements of this paragraph, the delinquency need not be reported in a Participant Notice for a subsequent plan year if the missed contribution has been paid in full by the time the subsequent Participant Notice is issued. The payments subject to the requirements of this paragraph are—

(i) Any minimum funding payment necessary to satisfy the minimum funding standard under section 302(a) of the Act for any plan year beginning on or after January 1, 1994, if not paid by the earlier of the due date for that payment (the latest date allowed under section 302(c)(10)) or the date of issuance of the Participant Notice; and

(ii) An installment or other payment required by section 302 of the Act for a plan year beginning on or after January 1, 1995, that was not paid by the 60th day after the due date for that payment;

(7) A statement to the effect that if a plan terminates before all pension benefits are fully funded, the PBGC pays most persons all pension benefits, but some persons may lose certain benefits that are not guaranteed;

(8) A summary of plan benefits guaranteed by the PBGC, with an explanation of the limitations on such guarantee; and

(9) A statement that further information about the PBGC's guarantee may be obtained by requesting the booklet ''Your Guaranteed Pension'' from Box YGP, Pueblo, Colorado 81009, along with the current price of the booklet. The Participant Notice may include a statement that the booklet may be obtained through electronic access to the Consumer Information Center via

the World Wide Web at http://www.gsa.gov/staff/pa/cic/money.htm.

(c) *Notice Funding Percentage*—(1) *General Rule.* The Notice Funding Percentage that must be included in the Participant Notice for a plan year is the ''funded current liability percentage'' (as that term is defined in section 302(d)(9)(C) of the Act) for that plan year or the prior plan year.

(2) *Small plans.* A plan that is exempt from the requirements of section 302(d) of the Act for a plan year by reason of section 302(d)(6)(A) may determine its funded current liability percentage for that plan year using the Small Plan DRC Exception Test rules in § 2627.4(b).

(d) *Additional information.* The plan administrator may include with the Participant Notice any information not described in paragraph (b) of this section only if it is in a separate document.

(e) *Foreign languages.* In the case of a plan that (as of the date selected under § 2627.7) covers the numbers or percentages specified in § 2520.104b–10(e) of this title of participants literate only in the same non-English language, the plan administrator shall provide those participants either—

(1) An English-language Participant Notice that prominently displays a legend, in their common non-English language, offering them assistance in that language, and clearly setting forth any procedures participants must follow to obtain such assistance, or

(2) A Participant Notice in that language.

Appendix A to Part 2627—Model Participant Notice

The following is an example of a Participant Notice that satisfies the requirements of § 2627.10 when the required information is filled in (subject to §§ 2627.10(d)–(e), where applicable).

Notice to Participants of [Plan Name]

The law requires that you receive information on the funding level of your defined benefit pension plan and the benefits guaranteed by the Pension Benefit Guaranty Corporation (PBGC), a federal insurance agency.

YOUR PLAN'S FUNDING

As of [DATE], your plan had [INSERT NOTICE FUNDING PERCENTAGE] percent of the money needed to pay benefits promised to employees and retirees.

To pay pension benefits, your employer is required to contribute money to the pension plan over a period of years. A plan's funding percentage does not take into consideration the financial strength of the employer. Your employer, by law, must pay for all pension benefits, but your benefits may be at risk if your employer faces a severe financial crisis or is in bankruptcy.

[INCLUDE THE FOLLOWING PARAGRAPH ONLY IF, FOR ANY OF THE PREVIOUS FIVE PLAN YEARS, THE PLAN HAS BEEN GRANTED AND HAS NOT FULLY REPAID A FUNDING WAIVER.]

Your plan received a funding waiver for [LIST ANY OF THE FIVE PREVIOUS PLAN YEARS FOR WHICH A FUNDING WAIVER WAS GRANTED AND HAS NOT BEEN FULLY REPAID]. If a company is experiencing temporary financial hardship, the Internal Revenue Service may grant a funding waiver that permits the company to delay contributions that fund the pension plan.

[INCLUDE THE FOLLOWING WITH RESPECT TO ANY UNPAID OR LATE PAYMENT THAT MUST BE DISCLOSED UNDER 29 CFR 2627.10(b)(6):]

Your plan was required to receive a payment from the employer on [LIST APPLICABLE DUE DATE(S)]. That payment [has not been made] [was made on [LIST APPLICABLE PAYMENT DATE(S)]].

PBGC GUARANTEES

When a pension plan ends without enough money to pay all benefits, the PBGC steps in to pay pension benefits. The PBGC pays most people all pension benefits, but some people may lose certain benefits that are not guaranteed.

The PBGC pays pension benefits, up to certain maximum limits.

- The maximum guaranteed benefit is [INSERT FROM TABLE IN APPENDIX B] per month or [INSERT FROM TABLE IN APPENDIX B] per year for a 65-year-old person in a plan that terminates in [INSERT APPLICABLE YEAR].
- The maximum benefit may be reduced for an individual who is younger than age 65. For example, it is [INSERT FROM TABLE IN APPENDIX B] per month or [INSERT FROM TABLE IN APPENDIX B] per year for an individual who starts receiving benefits at age 55. [IN LIEU OF AGE 55, YOU MAY SUBSTITUTE ANY AGE(S) RELEVANT UNDER THE PLAN. IF THE PLAN PROVIDES FOR NORMAL RETIREMENT BEFORE AGE 65, YOU MUST INCLUDE THE NORMAL RETIREMENT AGE. IF THE PLAN DOES NOT PROVIDE FOR COMMENCEMENT OF BENEFITS BEFORE AGE 65, YOU MAY OMIT THIS PARAGRAPH.]
- The maximum benefit will also be reduced when a benefit is provided for a survivor.

The PBGC does not guarantee certain types of benefits. [INCLUDE THE FOLLOWING GUARANTEE LIMITS THAT APPLY TO THE BENEFITS AVAILABLE UNDER YOUR PLAN.]

- The PBGC does not guarantee benefits for which you do not have a vested right when a plan ends, usually because you have not worked enough years for the company.
- The PBGC does not guarantee benefits for which you have not met all age, service, or other requirements at the time the plan ends.
- Benefit increases and new benefits that have been in place for less than a year are not guaranteed. Those that have been in place for less than 5 years are only partly guaranteed.
- Early retirement payments that are greater than payments at normal retirement age may not be guaranteed. For example, a supplemental benefit that stops when you become eligible for Social Security may not be guaranteed.
- Benefits other than pension benefits, such as health insurance, life insurance, death benefits, vacation pay, or severance pay are not guaranteed.
- The PBGC does not pay lump sums exceeding $3,500.

WHERE TO GET MORE INFORMATION

Your plan, [EIN-PN], is sponsored by [CONTRIBUTING SPONSOR(S)]. If you would like more information about the funding of your plan, contact [INSERT NAME, TITLE, BUSINESS ADDRESS AND PHONE NUMBER OF INDIVIDUAL OR ENTITY].

For more information about the PBGC and the benefits it guarantees, you may request a copy of ''Your Guaranteed Pension'' for $1.25 by writing to Box YGP, Pueblo, Colorado 81009.

[THE FOLLOWING SENTENCE MAY BE INCLUDED:]

''Your Guaranteed Pension'' is also available through electronic access to the Consumer Information Center via the World Wide Web at http://www.gsa.gov/staff/pa/cic/money.htm.

Issued: [INSERT AT LEAST MONTH AND YEAR]

Appendix B to Part 2627—Table of Maximum Guaranteed Benefits

If a plan terminates in—	The maximum guaranteed benefit for an individual starting to receive benefits at the age listed below is the amount (monthly or annual) listed below:							
	Age 65		Age 62		Age 60		Age 55	
	Monthly	Annual	Monthly	Annual	Monthly	Annual	Monthly	Annual
1995	$2,573.86	$30,886.32	$2,033.35	$24,400.20	$1,673.01	$20,076.12	$1,158.24	$13,898.88

The maximum guaranteed benefit for an individual starting to receive benefits at ages other than those listed above can be determined by applying the PBGC's regulation on computation of maximum guaranteeable benefits (29 CFR 2621.4).

Issued in Washington, DC, this 27th day of June, 1995.

Robert B. Reich,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

James J. Keightley,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 95–16196 Filed 6–28–95; 8:45 am]

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Federal Register

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June 30, 1995

Part VI

Department of Housing and Urban Development

5 CFR Chapter LXV

24 CFR Part 0

Supplemental Standards of Ethical Conduct; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

5 CFR Chapter LXV

24 CFR Part 0

[Docket No. FR–3331–P–01]

RIN 2501–AB55, 13209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Housing and Urban Development

AGENCY: Office of the Secretary, Department of Housing and Urban Development (Department).

ACTION: Proposed rule.

SUMMARY: The Department of Housing and Urban Development (Department), with the concurrence of the Office of Government Ethics (OGE), proposes to issue regulations for the officers and employees of the Department that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. To ensure a comprehensive and effective ethics program at the Department and to address ethical issues unique to the Department, the proposed rule establishes prohibitions on the ownership of certain financial interests and restrictions on outside employment and business activities.

DATES: Comments are invited and must be received on or before August 29, 1995.

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

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Assistant General Counsel, Ethics Law Division, at (202) 708–3815, or Sam E. Hutchinson, Associate General Counsel, Office of Human Resources Law, (202) 708–2947; 451 Seventh Street, SW, Washington, DC 20810. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–3259. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION

I. Background

Executive Order 12674, as amended by Executive Order 12731, authorized the Office of Government Ethics (OGE) to establish a single, comprehensive and clear set of executive-branch standards of conduct. On August 7, 1992, OGE published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). *See* 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583 with additional grace period extensions at 59 FR 4779–4780 and 60 FR 6390–6391. Codified at 5 CFR part 2635, the Standards took effect on February 3, 1993, and established uniform standards of ethical conduct for all executive branch employees.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Department, with OGE's concurrence, has determined that the following supplemental rules contained in the proposed regulation, which would add a new chapter LXV, consisting of part 7501, to 5 CFR, are necessary to implement successfully the Department's ethics program in light of the Department's unique programs and operations. The Department of Housing and Urban Development is simultaneously removing its superseded Standards of Conduct at 24 CFR part 0 and is replacing those provisions with a single section that provides a cross-reference to 5 CFR parts 2634 and 2635, and to the Department's new supplemental regulations.

II. Analysis of the Regulation

The following is a section by section analysis of the proposed rule.

Section 7501.101 Purpose

Proposed § 7501.101 explains that the regulations contained in the proposed rule would apply to all Department employees and would supplement the executive branch-wide Standards. Special Government employees, as that term is defined by 18 U.S.C. 202 and 5 CFR 2635.102(l), however, would be exempt from §§ 7501.104 and 7501.105. Proposed § 7501.101 would also note that Department employees must comply with the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, the executive branch financial disclosure regulations at 5 CFR part 2634, this part, and any additional rules of conduct that the Department is authorized to issue. Upon finalization of this supplemental regulation, the Department will, as proposed, delete its present Standards of Conduct rule at 24 CFR part 0, except for a cross-reference to 5 CFR.

Section 7501.102 Definitions

Proposed § 7501.102 defines the key terms used in the proposed rule, and would include a definition of the term ''affiliate'' at § 7501.102.

Proposed § 7501.102 would, for purposes of the proposed rule and 5 CFR part 2635, delegate to the Associate General Counsel, Office of Human Resources Law, the Assistant General Counsel, Ethics Law Division, and the Field Assistant General Counsels, the authority to serve as agency designees and agency ethics officials for all Department employees. These proposed sections would also delegate to the Inspector General the authority to serve as agency designee and agency ethics official for Department employees in the Office of the Inspector General. Finally, the General Counsel, Office of Federal Housing Enterprise Oversight, would be delegated authority to act as agency designee and agency ethics official for Department employees in the Office of Federal Housing Enterprise Oversight.

''Assistance'' would be defined broadly by proposed § 7501.102 to include any contract, grant, loan, subsidy, guarantee, cooperative agreement or any other financial assistance under a program administered by the Secretary. The definition is intended to include ''assistance'' awarded by the Department that is subsequently redistributed competitively to a second tier of applicants. The term does not include, however, single family mortgage insurance provided under a program administered by the Secretary.

''Employment'' would be defined broadly at § 7501.102 as proposed to cover any form of non-Federal employment or business relationship involving the provision of personal services, including writing when done under an arrangement with another person for production or publication of the written product.

The term ''security'' also would be defined broadly at § 7501.102 of the proposed rule. The proposed definition is based, in part, on the definition of ''financial interest'' at 5 CFR 2635.403(c) and would include any interest in debt or equity instruments, such as stocks, bonds and commercial paper. The definition also would extend to loans securitized by mortgages or deeds of trust and securities backed by such instruments, but would not include deposit accounts.

Section 7501.103 Waivers

Proposed § 7501.103 would authorize the Designated Agency Ethics Official (DAEO) to grant HUD employees written waivers of any provision of the proposed Department rule based upon a determination that the waiver will not result in conduct inconsistent with 5 CFR part 2635 or otherwise prohibited by law, and that application of the provision would not be necessary to ensure public confidence in the impartiality and objectivity with which the Department's programs are administered. Authority to waive provisions of the Department's conduct regulations has been included in 24 CFR 0.735–106. Under proposed § 7501.103, the DAEO could grant a written waiver but require the employee to take further action, including executing a written disqualification statement. This provision is intended, in appropriate cases, to ease the burden that these supplemental regulations may impose on Department employees while ensuring that employees do not engage in actions or hold financial interests that may interfere with the objective and impartial performance of their official duties.

Section 7501.104 Prohibited Financial Interests

General Requirement. Proposed § 7501.104 would prohibit Department employees from receiving, acquiring, or owning certain financial interests that are related to or affected by Department operations, such as securities issued or collateralized by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. It would incorporate, with one addition, the restrictions implemented in 1987 through the promulgation of 24 CFR 0.735–204 of the Department's existing standards regulation. The additional restriction that would be imposed by paragraph (a)(2) reflects the Secretary's more recently acquired authority over the Federal Home Loan Mortgage Corporation under the Financial Institutions Reform, Recovery and Enforcement Act of 1989. (12 U.S.C. 4511). In accordance with 5 CFR 2635.403(a), these prohibitions are proposed on the basis of the Department's determination that the acquisition or holding by Department employees of the six categories of financial interests listed in proposed § 7501.104(a) would cause reasonable persons to question the impartiality and objectivity with which Department programs are administered.

Exceptions to prohibition for certain interests. Proposed § 7501.104(b) is substantially identical to the provision which it was designed to replace, 24 CFR 0.735–204(b). One provision which was modified, paragraph (b)(1), would permit employees to own interests in publicly traded or publicly available mutual or other investment funds which contain within their portfolios interests that they would be prohibited from holding by proposed § 7501.104(a). Under this provision, ownership of investment funds would be permitted as long as the employee does not have the ability to control the fund or its portfolio, and the fund does not have an objective or practice of concentrating its investments in residential mortgages or securities backed by residential mortgages other than those of the Government National Mortgage Association.

Reporting and Divestiture. Proposed § 7501.104(c) is loosely based on 24 CFR 0.735–204(c). It would require new employees, within 30 days of commencing employment, to report to the appropriate agency ethics official financial interests acquired prior to the commencement of their employment with the Department that they are prohibited from holding by § 7501.104(a). Employees would be required to divest such interests within 90 days of the date reported unless they receive a written waiver from the Designated Agency Ethics Official in accordance with § 7501.103. The proposed section would impose a similar reporting and divestiture requirement upon employees who acquire, without specific intent, financial interests prohibited by § 7501.104(a).

Section 7501.105 Outside Employment and Other Outside Activities

The proposed rule is designed to balance several important ethical principles against an employee's right to engage in outside activities. Proposed § 7501.105(a) would incorporate, with minor modification, the substance of 24 CFR 0.735–203(b)(4), a provision which was promulgated in 1987. The proposed section prohibits paid and unpaid employment with businesses dealing with or related to real estate or manufactured housing. The Department has determined that maintaining the policy against active participation in such businesses is necessary to protect against questions regarding the impartiality and objectivity of employees and the administration of the Department's programs. It would hinder the Department in meeting its missions if members of the public question whether Department employees are using their public positions or Department connections to advance their real estate careers.

In addition, since the parties involved in any real estate transaction, such as real estate agents, brokers, mortgagees, settlement attorneys, title and property insurance companies, appraisers, and developers, may do business with, or may be regulated by, the Department, an employee engaged in outside real estate transactions with these parties on a regular basis may be perceived as providing these persons preferential treatment in order to further his or her real estate-related business. In determining whether an employee is actively participating in a business related to real estate, the Department will consider a number of factors, including whether the employee maintains an office, advertises or solicits clients or business, hires staff, uses business stationery or similar materials, or establishes a formal or informal association with an existing business. The number of transactions over a period of time will also be considered in determining whether an employee is actively participating in a business.

Proposed § 7501.105(a)(2) and (a)(3) would incorporate, with minor revision, restrictions promulgated in 24 CFR 0.735–203(b)(5) and (b)(6). The additional employment restriction of proposed § 7501.105(a)(4) against employment with certain mortgage institutions was considered necessary in view of the Department's role as regulator under the authority of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

Proposed § 7501.105(b) would create exceptions to the prohibitions in § 7501.105(a) which would ensure that employees are not prohibited from serving as officers or directors of Federal credit unions or of certain cooperative or condominium associations. It would also give the Designated Agency Ethics Official authority to exempt service as an officer or director of other entities which would not be expected to raise appearance concerns.

Proposed § 7501.105(c) lists the circumstances under which an employee is required to obtain the approval of an agency ethics official prior to engaging in certain compensated or uncompensated outside employment activities. The requirement in proposed § 7501.105(c)(1)(i) to obtain prior approval to serve in a position of authority with any organization that receives Department assistance is new. Because these organizations interact with the Department and are affected by Department programs and operations, proposed § 7501.105(c)(1)(i) will ensure

that employees do not violate 18 U.S.C. 203, 205 and 208. In this regard, it is noted that the financial interests of an organization in which an employee serves as officer, director, trustee, general partner or employee are imputed to the employee by 18 U.S.C. 208.

Proposed § 7501(c)(1)(ii) and (c)(1)(iii) reflect the practice of the Department since 1982, and under 24 CFR 0.735–203(d) of the current HUD standards regulation to require employees to obtain approval prior to engaging in any outside activities which are in the same professional field as that of the employee's official position or which are with a State or local government. For purposes of this section, professions subject to the prior approval requirement are those that require specialized knowledge and often long and intensive training. As noted in 5 CFR 2636.305, it is a characteristic of a profession that those in the profession, through force of organization or concerted opinion, establish and maintain high standards of achievement and conduct. Secretarial and clerical positions are not, for purposes of this rule, included within the term ''profession.''

Proposed § 7501.105(c)(2) would establish the standards against which requests for prior approval of outside activities would be judged. In this regard, it is noted that requests will be approved unless inconsistent with the conflict of interest laws, executive branch-wide Standards or this part.

Proposed § 7501.105(d) reflects the policy of the Department to encourage its employees to volunteer their time to nonprofit organizations. This paragraph recognizes, however, that such service must be consistent with applicable law and regulation, including 18 U.S.C. 205 and 208.

Section 7501.106 Additional Rules for Certain Department Employees Involved in the Regulation or Oversight of Government Sponsored Enterprises

Proposed § 7501.106 would apply to certain Department employees whose official duties involve implementing the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (the Act). These rules would be in addition to those which would apply to these employees under §§ 7501.101–7501.105.

The need for these rules results from the authority granted the Department by the Act. The Act significantly expanded the Department's authority to regulate the Federal National Mortgage Association (Fannie Mae or FNMA) and the Federal Home Loan Mortgage Corporation (Freddie Mac or FHLMC), collectively referred to as Government sponsored enterprises (GSEs). In enacting this legislation, Congress sought to ensure, given the size of the GSEs and the fact that their securities are perceived as guaranteed by the Federal Government, the continued financial stability of the GSEs. In addition, Congress sought to establish a mechanism to ensure that the GSEs fulfill their public missions to stimulate the growth of affordable housing.

To achieve these goals, the Act divided the regulatory responsibility over the GSEs between a newly established Office of Federal Housing Enterprise Oversight (OFHEO) within the Department and the Secretary. OFHEO was given substantial independence in matters relating to the financial health and security of the GSEs. The Director of OFHEO has authority, for example, to issue the risk-based capital standards for the GSEs and to periodically conduct broad-based examinations of the GSEs without Secretarial review. To ensure that the GSEs are in compliance with the capital standards and are operating safely, the Director has exclusive authority to bring a broad range of enforcement actions against an enterprise, including final and temporary cease-and-desist actions and civil money penalties. In its financial safety and soundness mission, OFHEO is analogous to other Federal financial regulators.

The Act also granted the Secretary more specific authority over the housing missions and fair lending responsibilities of the GSEs. Under the Act, the Secretary has the authority to establish and monitor goals for the GSEs' purchase of mortgages financing housing for low- and moderate-income families, and to establish and monitor goals for the GSEs' purchase of mortgages financing housing located in rural areas, central cities, and other underserved areas. The Secretary also was provided authority to enforce fair lending requirements for the GSEs and to require the GSEs to assist the Department in investigating whether a mortgage lender has failed to comply with the Fair Housing Act and Equal Credit Opportunity Act. The Secretary is also authorized to approve new programs prior to the GSEs' implementation of such programs. To enforce compliance with these housing goals, the Secretary is authorized to hold hearings, issue cease-and-desist orders, and assess civil monetary penalties.

Based on the authority granted under the Act, the Department proposes to promulgate new restrictions which would, among other things, prohibit certain employees whose official duties involve implementing the Department's statutory responsibilities under the Act from acquiring or owning the financial interests of certain mortgage institutions which do business with or rely upon the GSEs.

Definitions. Proposed § 7501.106(b) would define the terms ''covered employee'' and ''mortgage institution'' for the purpose of § 7501.106. The term ''covered employee'' would include employees required to file public or confidential financial disclosure reports and who are employed in OFHEO and certain other Departmental offices that have responsibilities under the Act. By virtue of this definition, the term would include employees involved in auditing and reviewing the GSEs for financial soundness, establishing housing goals for the GSEs, reviewing the lending policies and practices of the GSEs, bringing regulatory actions against the GSEs or the lending institutions with which they do business or reviewing new GSE programs. It would also include employees who have access to financial data about the GSEs or the lenders with which they do business or are involved in developing or implementing new Federal Housing Administration (FHA) programs to meet the Secretary's housing goals.

''Mortgage institution'' would include any person or entity which originates or services mortgages that are owned or guaranteed by FNMA or FHLMC. The term would also include any person or entity which insures mortgages owned or guaranteed by FNMA or FHLMC.

Prohibited Financial Interests. Proposed § 7501.106 would prohibit covered employees and their spouses and minor children from owning securities issued by certain ''mortgage institutions.'' The Department has determined, consistent with 5 CFR 2635.403(a), that prohibiting covered employees from acquiring or holding financial interests in the mortgage institutions specified in proposed §§ 7501.106(c)(1)(i)–(iii) is necessary to maintain public confidence in the impartiality and objectivity with which the Department fulfills its statutory and regulatory functions to regulate the GSEs and establish housing goals. This prohibition also would ensure that widespread disqualifications of covered employees from official matters because of their financial interests do not adversely affect the Department's ability to carry out its mission. Moreover, actions taken by the Department may affect the market value of the securities of the mortgage institutions with which the GSEs deal.

Restrictions Arising from Third Party Relationships. Proposed § 7501.106(d) would attribute to a covered employee securities he or she would be prohibited from holding by § 7501.106(c) that are held by the entities described in this subsection. A covered employee with an attributed interest would be required to report the interest to the appropriate agency ethics official and could be required to terminate the relationship with the entity, disqualify himself or herself from a matter or take other appropriate action as determined by the agency ethics official to avoid a violation of the conflict of interest statutes, the executive branch-wide Standards, or these supplemental regulations.

Prohibited Outside Employment. Proposed § 7501.106(e) is intended to highlight for covered employees that they are prohibited by § 7501.105(a) from engaging in employment with or on behalf of a mortgage institution. Employment with or on behalf of a mortgage institution means performing any work, whether compensated or uncompensated, for or to be provided to a mortgage organization through its employees, contractors, or agents.

Prohibited Recommendations. Proposed § 7501.106(f) would prohibit a covered employee from recommending, suggesting or giving advice to any person with respect to financial transactions or investment actions involving FHLMC or FNMA securities. This provision would supplement 5 CFR 2635.704 with a provision designed specifically for covered employees which would prohibit them from using or creating the appearance of using information which is not available to the general public to further a private interest.

Prohibited Purchase of Assets. Proposed § 7501.106(g) would prohibit covered employees from purchasing real or personal property from FHLMC or FNMA unless purchased under circumstances which ensure that the property is sold for fair market value. It is proposed as a supplement to the more general prohibition in 5 CFR 2635.702 against the use of public office for private gain.

Pre-existing Interests. Proposed § 7501.106(h) would require a covered employee, upon entering a covered position, to report any interest he or she would be prohibited from continuing to hold by § 7501.106(c) to the agency ethics official within thirty days of the start of that covered employment. The covered employee would be required to divest such interest within 90 days of the date reported unless the employee receives a written waiver from the Designated Agency Ethics Official in accordance with § 7501.103. A similar requirement would apply to covered employees who acquire financial interests prohibited by § 7501.106(c) by gift or otherwise without specific intent on their part.

III. Removal of the Old Department Standards of Conduct Regulations

Because the Department's Standards of Conduct have been largely superseded by the new executive branch financial disclosure regulations at 5 CFR part 2634 and by the new executive branch-wide Standards at 5 CFR part 2635 as supplemented by the regulations contained in new 5 CFR part 7501, the Department is removing all of existing 24 CFR part 0. To ensure that employees are on notice of the ethical standards to which they are subject, the Department is replacing its old standards at 24 CFR part 0 with a residual provision that cross-references 5 CFR parts 2634, 2635 and 7501.

IV. Matters of Regulatory Procedure

Regulatory Flexibility Act

The Secretary in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities because it would affect only Federal employees.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, this rule is only directed toward Federal employees and would not alter the established roles of HUD and the States and local governments. As a result, the rule is not subject to review under the order.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs would result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as item number 1367 in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23375) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 5 CFR Part 7501

Conflict of interests, Government employees.

List of Subjects in 24 CFR Part 0

Administrative practice and procedure, Conflict of interests.

Dated: May 22, 1995.

Henry G. Cisneros,

Secretary of the Department of Housing and Urban Development.

Approved: June 1, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Department of Housing and Urban Development, with the concurrence of the Office of Government Ethics, is proposing to amend title 5 of the Code of Federal Regulations by adding a new chapter LXV, consisting of part 7501, and to amend title 24 of the Code of Federal Regulations by revising part 0, to read as follows:

1. In title 5, a new chapter LXV, consisting of part 7501, would be added to read as follows:

5 CFR CHAPTER LXV—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 7501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec.

7501.101 Purpose.
7501.102 Definitions.

7501.103 Waivers.
7501.104 Prohibited financial interests.
7501.105 Outside employment.
7501.106 Additional rules for certain Department employees involved in the regulation or oversight of Government sponsored enterprises.

Authority: 5 U.S.C. 301, 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803, 2635.807.

§ 7501.101 Purpose.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Housing and Urban Development (HUD or Department) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Employees are required to comply with 5 CFR part 2635, this part, and any additional rules of conduct that the Department is authorized to issue.

§ 7501.102 Definitions.

For purposes of this part, and otherwise as indicated, the following definitions shall apply:

Affiliate means any entity that controls, is controlled by, or is under common control with another entity.

Agency designee, as used also in 5 CFR part 2635, means the Associate General Counsel for Human Resources Law, the Assistant General Counsel, Ethics Law Division, and the HUD Field Office Assistant General Counsels; the Inspector General, for employees assigned to the Office of the Inspector General; and the General Counsel, Office of Federal Housing Enterprise Oversight, for employees assigned to the Office of Federal Housing Enterprise Oversight.

Agency ethics official, as used also in 5 CFR part 2635, means the agency designees as specified above.

Assistance means any contract, grant, loan, subsidy, guarantee, cooperative agreement or other financial assistance under a program administered by the HUD Secretary, and includes ''assistance'' awarded by the Department that is competitively redistributed to a second tier of applicants or awardees. The term does not include single family mortgage insurance provided under a program administered by the Secretary.

Designated Agency Ethics Official (DAEO) means the General Counsel of HUD or the Deputy General Counsel (Operations) in the absence of the General Counsel.

Employment means any compensated or uncompensated form of non-Federal employment or business relationship, including self-employment, involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product.

Security means all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper including loans securitized by mortgages or deeds of trust and securities backed by such instruments, as well as all types of preferred and common stock. The term encompasses current and contingent ownership interests including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limit, interests convertible into such securities, as well as, options, rights, warrants, puts, calls and straddles with respect thereto. The term shall not, however, be construed to include deposit accounts.

§ 7501.103 Waivers.

The Designated Agency Ethics Official (DAEO) may waive any provision of this part upon finding that the waiver will not result in conduct inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that application of the provision is not necessary to ensure public confidence in the impartiality and objectivity with which the Department's programs are administered. Each waiver shall be in writing and supported by a statement of the facts and findings upon which it is based and may impose appropriate conditions, such as requiring the employee's execution of a written disqualification statement.

§ 7501.104 Prohibited financial interests.

(a) *General requirement.* This section applies to all HUD employees except special Government employees. Except as provided in paragraph (b) of this section, an employee, or an employee's spouse or minor child, shall not directly or indirectly receive, acquire or own:

(1) Securities issued by the Federal National Mortgage Association (FNMA) or securities collateralized by FNMA securities;

(2) Securities issued by the Federal Home Loan Mortgage Corporation (FHLMC) or securities collateralized by FHLMC securities;

(3) FHA debentures or certificates of claim;

(4) Stock or another financial interest in a Department-owned, insured or subsidized multifamily project or single family dwelling, cooperative unit, or condominium unit, except to the extent that the stock or other interest represents the employee's principal residence. Employees who wish to purchase a Department-held property as a principal residence must adhere to the procedures established by the Assistant Secretary for Housing for the administration of the property disposition program set forth in HUD Handbook 4310.5;

(5) Any Department subsidy provided pursuant to Section 8 of the United States Housing Act of 1937, as amended, (42 U.S.C. 1437f) to or on behalf of a tenant of property owned by the employee. However, an employee may receive such a subsidy when:

(i) The employee acquires without specific intent, as through gift or inheritance, a property which at the time of acquisition has a tenant receiving such a subsidy, but only as long as that tenant continues to reside in the property; or

(ii) An incumbent tenant who has not previously received such a subsidy becomes the beneficiary thereof, but only if there is no increase in that tenant's rent upon the commencement of subsidy payments other than normal annual adjustments; or

(6) Any direct creditor interest in a mortgage insured by the Department.

(b) *Exception to prohibition for certain interests.* Nothing in this section prohibits an employee, or the spouse or minor child of an employee, from acquiring, owning, or controlling:

(1) An interest in a publicly traded or publicly available investment fund which, in its prospectus, does not indicate the objective or practice of concentrating its investments in residential mortgages or securities backed by residential mortgages, except those of Government National Mortgage Association (GNMA), and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund;

(2) A limited partnership interest in a partnership which has at least 5,000 partnership interests, of which less than 25% of the assets are Department insured or subsidized projects; or

(3) Mortgage insurance provided pursuant to section 203 of the National Housing Act (12 U.S.C. 1709) on the employee's principal residence and any one other single family residence.

(c) *Reporting and divestiture.* An employee must report, in writing, to the appropriate agency ethics official, any interest prohibited under paragraph (a) of this section acquired prior to the commencement of employment with the Department or without specific intent, as through gift, inheritance, or marriage, within 30 days from the start of employment or acquisition of such interest. Such interest must be divested within 90 days from the date reported unless waived by the Designated Agency Ethics Official in accordance with § 7501.103.

§ 7501.105 Outside employment.

(a) *Prohibited outside employment.* Subject to the exceptions set forth in paragraph (b) of this section, HUD employees, except special Government employees, shall not engage in:

(1) Employment involving active participation in a business dealing with or related to real estate or manufactured housing including but not limited to real estate brokerage, management and sales, architecture, engineering, mortgage lending, property insurance, appraisal services, construction, construction financing, land planning, or real estate development;

(2) Employment with a person, other than a State or local government, who engages in lobbying activities concerning Department programs or who is required to report expenditures for lobbying activities or register as a lobbyist under 42 U.S.C. 3537b or similar statutes which require the registration of persons who attempt to influence the decisions of officers or employees of the Department;

(3) Employment as an officer or director of a person who is a Department-approved mortgagee, a lending institution or an organization which services securities for the Department; or

(4) Employment with the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Finance Board or any affiliate thereof.

(b) *Exceptions to employment prohibitions.* The prohibitions set forth in paragraph (a) of this section do not apply to serving as an officer or a member of the Board of Directors of:

(1) A Federal Credit Union;

(2) A cooperative or condominium association for a housing project which is not subject to regulation by the Department or, if so regulated, in which the employee personally resides; or

(3) An entity designated in writing by the Designated Agency Ethics Official.

(c) *Prior approval requirement.* (1) Employees shall obtain the prior written approval of an agency ethics official before accepting compensated or uncompensated employment:

(i) As an officer, director, trustee, or general partner of, or in any other position of authority with, either a for-profit or non-profit organization which directly or indirectly receives assistance from the Department.

(ii) With a State or local government; or

(iii) In the same professional field as that of the employee's official position.

(2) Approval shall be granted unless the conduct is inconsistent with 5 CFR part 2635 or this part.

(d) *Voluntary services.* Subject to the restrictions and requirements contained in the conflict of interest laws, 5 CFR part 2635 and this part, employees are encouraged to volunteer their personal time to nonprofit organizations.

§ 7501.106 Additional rules for certain Department employees involved in the regulation or oversight of Government sponsored enterprises.

(a) The following rules apply to certain Department employees whose duties involve the regulation or oversight of Government Sponsored Enterprises, specifically the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC). This section is in addition to §§ 7501.101 to 7501.105.

(b) *Definitions.* For purposes of this section, the following definitions are applicable:

(1) *Covered employee* means an employee required to file a public or confidential financial disclosure report under 5 CFR part 2634 in:

(i) the Office of the HUD Secretary;

(ii) the Office of Federal Housing Enterprise Oversight;

(iii) the Office of the Assistant Secretary for Housing-Federal Housing Commissioner, with the exception of the Office of the Deputy Assistant Secretary for Operations;

(iv) the Office of Financial Institutions Regulation in the Office of the Assistant Secretary for Policy Development and Research;

(v) the Offices of Investigation, Program Standards and Evaluation, and Regulatory Initiatives and Federal Coordination within the Office of the Assistant Secretary for Fair Housing and Equal Opportunity;

(vi) the Offices of Insured Housing, Finance and Regulatory Enforcement, Legislation and Regulations, and the Fair Housing Enforcement Division in the Office of the General Counsel;

(vii) the official superiors of the employees listed in paragraphs (b)(1)(iv), (b)(1)(v) and (b)(1)(vi) of this definition; and

(viii) any other employee in the offices listed above who is designated in writing by the Secretary or the appropriate individual of Assistant Secretary rank, or his or her designee, to ensure compliance with the principles set forth in 5 CFR 2635.403.

(2) *Mortgage institution* means mortgage bankers, mortgage brokers, banks, savings and loans, and other institutions that originate or service mortgages that are owned or guaranteed by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC).

(c) *Prohibited financial interests.* (1) Except as provided in paragraph (c)(2) of this section, a covered employee, or a spouse or minor child of a covered employee, shall not receive, acquire, or own securities of:

(i) a mortgage institution if more than 20 percent of the institution's assets consist of mortgages;

(ii) a mortgage institution in which 20 percent or less of the institution's assets consist of mortgages and more than 40 percent of the mortgages originated by the institution are sold to or guaranteed by FNMA and/or FHLMC; or

(iii) a mortgage institution which services or insures mortgages if more than 20 percent of the gross income of such institution is derived from either or both of these activities.

(2) The prohibitions in paragraph (c)(1) of this section do not apply to ownership of securities held in a publicly traded or publicly available investment fund, or profit-sharing, retirement, or similar plan which in its prospectus or governing documents does not indicate the objective or practice of concentrating its investments in the financial services sector, and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund.

(3) The mortgage institution's most recent financial statement shall be used in determining the applicability of the prohibitions in paragraph (c)(1) of this section.

(d) *Restrictions arising from third party relationships.* If any of the entities listed below have securities that a covered employee would be prohibited from owning by paragraph (c) of this section, the employee shall report such interest to the appropriate Agency Ethics Official. The Agency Ethics Official may require the employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action determined to be necessary consistent with 5 CFR part

2635 and this part. This paragraph applies to a:

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

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

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

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

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

(6) Other entity in which the covered employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest.

(e) *Prohibited outside employment.* In accordance with § 7501.105(a)(1), covered employees shall not engage in employment with or on behalf of a mortgage institution.

(f) *Prohibited recommendations.* Covered employees shall not make any recommendation or suggestion, directly or indirectly, concerning the acquisition, sale, or divestiture of securities of FHLMC or FNMA.

(g) *Prohibited purchase of assets.* Covered employees, their spouses or minor children shall not purchase, directly or indirectly, any real or personal property from FHLMC or FNMA, unless it is sold at public auction or by other means which would assure that the selling price is the asset's fair market value.

(h) *Pre-existing interests.* Covered employees must report, in writing, to the appropriate Agency Ethics Official, any interest prohibited under paragraph (c) of this section acquired prior to either the commencement of employment as a covered employee or the effective date of this part, or acquired without specific intent, as through gift, inheritance, or marriage, within 30 days from the start of covered employment or acquisition of such interest. Such interest must be divested within 90 days from the date it is reported unless waived by the Designated Agency Ethics Official in accordance with § 7501.103.

24 CFR Subtitle A—Office of the Secretary Department of Housing and Urban Development

PART 0—STANDARDS OF CONDUCT

2. 24 CFR part 0 consisting of § 0.1 would be revised to read as follows:

§ 0.1 Cross-reference to employees ethical conduct standards and financial disclosure regulations.

Employees of the Department of Housing and Urban Development (Department) are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635 and the Department regulation at 5 CFR Chapter LXV which supplements the executive branch-wide standards, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

(5 U.S.C. 7301; 42 U.S.C. 3535(d)).

[FR Doc. 95–16129 Filed 6–29–95; 8:45 am]

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Federal Register

Friday
June 30, 1995

Part VII

Department of Education

34 CFR Parts 600, 667, 668, and 674
Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600, 667, 668, and 674

Institutional Eligibility Under the Higher Education Act of 1965, as Amended; State Postsecondary Review Program; Student Assistance General Provisions; Federal Perkins Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the following regulatory provisions to correct minor technical errors and to conform with self-implementing statutory provisions: the institutional eligibility regulations contained in Part 600, Subparts A and C; the allotment formula and funding procedures regulations contained in Part 667, Subpart B of the State Postsecondary Review Program regulations; the student eligibility regulations contained in Part 668, Subpart A of the Student Assistance General Provisions regulations; the standards for participation regulations contained in Part 668, Subpart B; the student consumer information regulations contained in Part 668, Subpart D; the verification regulations contained in Part 668, Subpart E; the fine, limitation, suspension, and termination proceedings regulations contained in Part 668, Subpart G; the cash management regulations contained in Part 668, Subpart K; and the Federal Perkins Loan Program regulations contained in Part 674, Subpart A.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Rachael Sternberg, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202. Telephone: (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following sections are amended for clarification and consistency throughout the title IV, HEA programs, and to correct technical errors and omissions in the text of the final regulations:

Section 600.7 is amended to address an omission from current regulations addressing the effect of a bankruptcy filing on the institution's eligibility. Current regulations address the effect of filing for relief in bankruptcy on institutional eligibility, but omit explanation of the effect of an involuntary petition filed against the institution or its affiliates. In filing an involuntary petition, creditors seek a judicial ruling that an entity is in such financial straits that it must be treated, for the benefit of the creditors, like an entity that needs and voluntarily seeks protection in bankruptcy. Section 600.7 is therefore amended to clarify that an institution is subject to the statutory exclusion from eligibility only after the institution or its affiliate voluntarily files for relief in bankruptcy or there has been an order for relief entered as a result of an involuntary petition for relief against the institution or its affiliate.

Section 600.30(a) describes the events that an institution must report to the Secretary; as recently published, paragraph (a)(7) would have the institution report the ''exercise'' of substantial control by an individual or entity that previously lacked such control. This appeared to change prior requirements that the institution report the acquisition of substantial control by such an individual, rather than the first exercise of such control. This change was not intentional, and the provision is revised to continue the requirement that the institution report the acquisition of substantial control by one who did not have that power.

Section 600.31 is revised to correct inadvertent errors in the percentages of ownership interest that would be deemed to constitute control of a closely-held corporation; paragraph (c)(1)(ii) of this section describes a 50% interest as sufficient to give control over such a corporation; this should read ''greater than'' a 50% interest. Similarly, current regulations refer to a change ''of'' ownership and control, yet many of the changes addressed in this section are really changes within the current ownership of an institution, and section 498 of the HEA itself refers to changes ''in'' ownership and control. The regulatory references are revised here to refer to changes ''in'' ownership and control, in order to more accurately reflect this fact.

Section 668.7 is also amended as a result of recent changes set forth in the Bankruptcy Reform Act of 1994 (Pub. L. 103–394). The Bankruptcy Reform Act of 1994 prohibits a school, lender, guarantor, or the Department of Education from denying an applicant eligibility for title IV, HEA program assistance on the grounds that the applicant failed to repay a debt that was discharged or dischargeable in bankruptcy. This amendment took effect on October 22, 1994, the date of enactment of the law, and superseded those provisions of § 668.7(f) that provided that a borrower was considered to remain in default on a title IV, HEA program loan discharged in bankruptcy and therefore was ineligible for new loan assistance unless the borrower made satisfactory arrangements to repay the debt. Section 668.7(f) is therefore amended here to conform with existing law: a student whose loan or grant overpayment is discharged or determined to be dischargeable qualifies for new title IV, HEA grant, loan, and work study assistance without regard to the prior default on that loan or unpaid status on that grant overpayment.

Bankruptcy law establishes a number of exceptions to discharge that can apply to student loans and grant overpayments, but the most pertinent of these, found in 11 U.S.C. 523(a)(8), addresses the dischargeability of student aid debts in particular. The legislative history of 11 U.S.C. 523(a)(8) and cases interpreting that provision make clear that this provision of bankruptcy law, which is unaffected by the new amendments, makes title IV, HEA student aid debts presumptively non-dischargeable in bankruptcy until the borrower files a complaint in the bankruptcy proceeding and obtains a court decision that the debt qualifies for discharge under either of the two exceptions in 11 U.S.C. 523(a)(8). An applicant for student aid who claims that a defaulted prior student loan or an unpaid grant overpayment obligation is dischargeable or was discharged in bankruptcy must provide the institution with the appropriate documentation to prove that claim.

To reduce unnecessary burden on potential title IV, HEA applicants, the regulation as revised permits the holder of the debt to accept what it deems to be satisfactory proof that the debt would qualify for a determination of dischargeability under 11 U.S.C. 523(a)(8)(A) based on the fact that the debt first became due for the requisite period—currently seven years—prior to the filing of the petition in bankruptcy. The holder of the loan or grant obligation can typically determine the duration of the repayment with reliability from its own records. If the holder of the loan or grant obligation is satisfied that these records establish that the debt was in repayment for the requisite period, there is no need to require the applicant to secure a judicial determination of that fact. It has been a common practice to accept this showing as sufficient to consider a title IV, HEA program debt to be dischargeable, and this regulation reflects and incorporates that practice. However, where the duration of the repayment period is in

dispute, where the applicant asserts that repayment would constitute an undue hardship so as to be dischargeable under 11 U.S.C. 523(a)(8)(B), or where the dischargeability of the debt is in question on other grounds, such as failure to schedule the debt properly, the applicant must obtain a specific judicial determination that the debt is dischargeable.

Section 668.15 is amended by adding paragraph (b)(7)(i)(C), revising paragraphs (c)(1)(ii), and (e)(3)(ii), and by adding a new paragraph (e)(3)(iii). Paragraph 668.15(b)(7)(i)(C) is a continuing requirement that was inadvertently omitted in the November 29, 1994 Final Regulations. The Secretary is revising § 668.15(c) to clarify that an institution may rebut a finding of not meeting financial responsibility standards due to the past performance of its owners by showing that any prior liabilities are in repayment. Section 668.15(e)(3) has been modified to include a reference to the Office of Management and Budget Circular for use by state and local governments.

Section 668.16 is amended to allow schools to appeal FFEL cohort default rates under all FFEL appeal criteria. Under the current regulations, appeal is allowed only under paragraph § 668.17(d): erroneous data under mitigating circumstances. This exclusion was unintentional.

Section 668.22 is corrected to clarify that the federal refund by an institution to a student attending that institution is based upon all the institutional charges assessed the student by the institution, not just tuition charges. This section is also corrected to clarify when the administrative fee of the lesser of 5% or $100 is applicable.

Section 668.47 is amended to clarify that, in paragraph (a)(6)(i), all statistics concerning the occurrence on campus of the stated criminal offenses, whether reported to the local police or to an official of the school, must be included in the annual security report published and distributed by September first of each and every year starting with September 1, 1992. Paragraph (a)(8) is corrected and redesignated to eliminate reference to the Hate Crimes Statistics Act; that act does not apply to the crimes listed in this paragraph. Paragraph (b)(1) is corrected to clarify that the paragraph applies only to distribution to current students and employees, as distribution requirements for prospective students are covered in a separate paragraph (paragraph (b)(2)).

Section 668.57 is corrected to clarify that the signature of the independent applicant need not be accompanied by the signature of the applicant's spouse for the purpose of verifying household size and the number of family members enrolled in a postsecondary educational institution. This correction conforms with the signature requirements on the 1995–1996 Free Application for Federal Student Aid (FAFSA).

Section 668.59 is amended to include the applicant's income earned from work in the use of the $400 tolerance option provided in the final regulations for Student Assistance General Provisions that were published in the **Federal Register** on November 29, 1994. This option authorizes an institution to disburse assistance under these programs without recalculating the applicant's award. If the net difference in dollar items for Adjusted Gross Income (AGI), untaxed income, and U.S. taxes paid is $400 or less, the Secretary has determined that the $400 tolerance in § 668.59(a)(2)(ii) and (c)(2)(ii) should also be applicable to income earned from work reported by individuals who are not required to file a tax return.

The language of § 668.83 is revised to correct the description of the roles of the respective officials with regard to emergency actions, and the consequences of certain actions taken by those officials on pending emergency actions. The show-cause official, in ruling on objections raised to an emergency action, may continue, modify, or revoke a pending emergency action. A revocation by the show-cause official disposes of the action on the stated grounds with prejudice to its reinitiation on those same grounds. The initiating official may continue or modify a pending action, or may withdraw that action prior to its expiration. In contrast to revocation by the show-cause official, withdrawal by the initiating official of a pending emergency action is without prejudice to emergency action being reinitiated on the same grounds.

Sections 668.162, 668.165 and 668.166 are amended to clarify how the cash management regulations pertain to the provisions of the PLUS Loan program. Section 668.165 is also amended to clarify, in accordance with statute, that in order to disburse Federal Direct Student Loan program funds to a student, an institution must credit that student's account if the institution uses student accounts.

Section 668.163 is revised to clarify the individual steps required under the reimbursement funding method.

Section 668.164 is amended to clarify that FFEL program funds are excluded from the bank account and interest recovery requirements of this section. An institution that receives FFEL Program funds through electronic funds transfer or by master check must meet the requirements described in § 682.207(b).

Section 674.16(d) is amended to restore the provision allowing an institution to advance funds to a student while studying abroad, without obtaining the student's signature for the advance of funds. The December 1, 1994 Student Assistance General Provisions final regulations inadvertently amended this section of the November 30, 1994 final Campus-based regulations.

Waiver of Notice of Proposed Rulemaking

In accordance with section 437 of the General Education Provisions Act, 20 U.S.C. 1232, and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the regulatory changes in this document are necessary to correct minor technical errors and to implement mandatory statutory provisions. The changes in this document do not establish any new policies. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of higher education. These regulations contain technical amendments designed to clarify and correct current regulations. The changes will not have a significant economic impact on the institutions affected.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 600

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—

education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 667

Administrative practice and procedure, Colleges and universities, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, States, Student aid.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 674

Education loan programs—education, Student aid.

Dated: June 27, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Education Opportunity Grant Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Federal State Student Incentive Grant Program; 84.268 Federal Direct Student Loan Program; and 84.272 National Early Intervention Scholarship and Partnership Program.)

The Secretary amends Parts 600, 667, 668, and 674 of Title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for Part 600 continues to read as follows:

Authority: 20 U.S.C. 1088, 1091, 1094, 1099b, 1099c, and 1141, unless otherwise noted.

2. Section 600.7 is amended by revising paragraphs (a) introductory text, (a)(1) introductory text, (a)(1)(iv), and (a)(2) to read as follows:

§ 600.7 Conditions of institutional eligibility.

(a) *General rule.* For purposes of title IV of the HEA, an educational institution that otherwise satisfies the requirements contained in §§ 600.4, 600.5, or 600.6 nevertheless does not qualify as an eligible institution under this part if—

(1) For its latest complete award year—

* * * * *

(iv) Fifty percent or more of its regular enrolled students had neither a high school diploma nor the recognized equivalent of a high school diploma, and the institution does not provide a four-year or two-year educational program for which it awards a bachelor's degree or an associate degree, respectively;

(2) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management of policies of the institution—

(A) Files for relief in bankruptcy, or

(B) Has entered against it an order for relief in bankruptcy; or

* * * * *

3. Section 600.30 is amended by revising paragraph (a)(7) introductory text to read as follows:

§ 600.30 Institutional notification requirements.

(a) * * *

(7) A person—s ability to affect substantially the actions of the institution, if that person did not previously have this ability. The Secretary generally considers a person to have this ability if the person—

* * * * *

4. Section 600.31 is amended by revising paragraphs (a)(1), (a)(2) introductory text, (c)(1), (c)(2), (c)(3) introductory text, (c)(4), and (e) introductory text, to read as follows:

§ 600.31 Change in ownership resulting in a change of control.

(a) *General.* (1) An institution that undergoes a change in ownership that results in a change of control ceases to qualify as an eligible institution upon the change in ownership and control. A change in ownership that results in a change in control includes any change by which a person who has or thereby acquires an ownership interest in the entity that owns this institution or the parent corporation of that entity, acquires or loses the ability to control the institution.

(2) In order to reestablish eligibility and to resume participation in the title IV, HEA programs, the institution must demonstrate to the Secretary that after the change in ownership and control—

* * * * *

(c) *Standards for identifying changes in ownership and control*—(1) *Closely-held corporation.* A change in ownership and control occurs when—

(i) A person acquires more than 50 percent of the total outstanding voting stock of the corporation;

(ii) A person who holds an ownership interest in the corporation acquires control of more than 50 percent of the outstanding voting stock of the corporation; or

(iii) A person who holds or controls 50 percent or more of the total outstanding stock of the corporation ceases to hold or control that proportion of the stock of the corporation.

(2) *Publicly-traded corporation required to be registered with the Securities and Exchange Commission (SEC).* A change in ownership and control occurs when a change of control of the corporation takes place that gives rise to the obligation to file a Form 8K with the SEC notifying that agency of the change in control.

(3) *Other corporations.* A change in ownership and control of a corporation that is neither closely-held nor required to be registered with the SEC occurs when—

* * * * *

(4) *Partnership or sole proprietorship.* A change in ownership and control occurs when a person who has or acquires an ownership interest acquires or loses control as described in this section.

* * * * *

(e) *Excluded transactions.* A change in ownership and control otherwise subject to this section does not include a transfer of ownership and control upon the retirement or death of the owner, to—

* * * * *

PART 667—STATE POSTSECONDARY REVIEW PROGRAM

5. The authority for Part 667 continues to read as follows:

Authority: 20 U.S.C. 1099a through 1099a–3, unless otherwise noted.

6. Section 667.12 is amended by revising paragraph (c)(2)(iii) introductory text, and (c)(2)(iii)(A) to read as follows:

§ 667.12 Application for funds.

* * * * *

(c) * * *

(2) * * *

(iii) A SPRE may establish the lowest review priority for an institution if—

(A) The institution is referred to the SPRE for a reason described in § 667.5(b)(6) concerning the timely submission of an audit report or § 667.5(b)(9) concerning a change in ownership that results in a change of control; and

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

7. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1099c, and 1141, unless otherwise noted.

8. Section 668.7 is amended by removing paragraph (b)(1) introductory text ''Before admission—'', revising paragraph (f), and revising the authority citation to read as follows:

§ 668.7 Eligible student.

* * * * *

(f) *Effect of bankruptcy relief on title IV, HEA program eligibility.* The Secretary does not consider an unpaid title IV, HEA program loan to be in default nor an unpaid title IV, HEA program grant overpayment to be owed for purposes of determining eligibility for assistance under a title IV, HEA program if the student applicant—

(1) Has obtained a judicial determination that the debt has been discharged or is dischargeable in bankruptcy, or

(2) Demonstrates to the satisfaction of the holder of the debt that—

(i) At the time the applicant filed the petition for relief the loan or demand had been outstanding for repayment of the grant overpayment, for the period required under 11 U.S.C. 523(a)(8)(A), exclusive of applicable suspensions of the repayment period for either debt of the kind defined in 34 CFR 682.402(m), and

(ii) The debt otherwise qualifies for discharge under applicable bankruptcy law.

* * * * *

(**Authority:** 20 U.S.C. 1070a-1070c-1, 1077, 1078, 1078–1–3, 1082, 1085, 1087a, 1087cc, and 1091; 28 U.S.C. 3201; 42 U.S.C. 2753; section 9 of Pub. L. 100–369; and 11 U.S.C. 523 and 525)

9. Section 668.13 is amended by revising paragraphs (c)(2)(ii) and (c)(2)(iii) to read as follows:

§ 668.13 Certification procedures.

* * * * *

(c) * * *

(2) * * *

(ii) Not later than the end of the third complete award year following the date on which the Secretary provisionally certified the institution under paragraphs (c)(1)(ii), (iii), (iv) or (e)(2) of this section; and

(iii) If the Secretary provisionally certified the institution under paragraph (c)(1)(v) of this section, not later than 18 months after the date that the Secretary withdrew recognition from the institution—s nationally recognized accrediting agency.

* * * * *

10. Section 668.15 is amended by adding new paragraph (b)(7)(i)(C), revising paragraphs (c)(1)(ii), and (e)(3)(ii), and by adding a new paragraph (e)(3)(iii) to read as follows:

§ 668.15 Factors of financial responsibility.

* * * * *

(b) * * *

(7) * * *

(i) * * *

(C) Had, for its latest fiscal year, a positive tangible net worth. In applying this standard, a positive tangible net worth occurs when the institution's tangible assets exceed its liabilities. The calculation of tangible net worth shall exclude all assets classified as intangible in accordance with the generally accepted accounting principles; or

* * * * *

(c) * * *

(1) * * *

(ii) That person, family member, institution, or servicer does not demonstrate that the liability is being repaid in accordance with an agreement with the Secretary; or

* * * * *

(e) * * *

(3) * * *

(ii) Office of Management and Budget Circular A–133, ''Audits of Institutions of Higher Education and Other Nonprofit Organizations;'' or

(iii) Office of Management and Budget Circular A–128, ''Audits of State and Local Governments.''

* * * * *

11. Section 668.16 is amended by removing the letter ''(d)'' from the cross-reference in the last sentence of paragraph (m)(2)(ii).

12. Section 668.22 is amended by revising paragraph (d)(1) to read as follows:

§ 668.22 Institutional refunds and repayments.

* * * * *

(d) *Federal Refund.* (1) ''Federal refund,'' as used in this section, means a refund by an institution to a student attending that institution of not less than the portion of institutional charges (tuition, fees, room, board and other charges assessed the student by the institution) to be refunded as follows—

(i) The institution must refund 100 percent of institutional charges, if a student withdraws from the institution before the first day of classes for the period of enrollment for which the student was charged;

(ii) The institution must refund 100 percent of institutional charges, less an administrative fee, if any, as described in paragraph (d)(2) of this section, if a student withdraws on the first day of classes for the period of enrollment for which the student was charged;

(iii) The institution must refund at least 90 percent of institutional charges, less an administrative fee, if any, as described in paragraph (d)(2) of this section, if a student withdraws at any time after the first day of classes for the period of enrollment for which the student was charged up to and including the end of the first 10 percent (in time) of that period of enrollment;

(iv) The institution must refund at least 50 percent of institutional charges, less an administrative fee, if any, as described in paragraph (d)(2) of this section, if the student withdraws at any time after the end of the first 10 percent (in time) of the period of enrollment for which the student was charged up to and including the end of the first 25 percent (in time) of that period of enrollment; and

(v) The institution must refund at least 25 percent of institutional charges, less an administrative fee, if any, as described in paragraph (d)(2) of this section, if the student withdraws at any time after the end of the first 25 percent (in time) of the period of enrollment for which the student was charged up to and including the end of the first 50 percent (in time) of that period of enrollment.

* * * * *

13. Section 668.47 is amended by revising paragraphs (a)(6)(i), (a)(8), (b)(1) introductory text, and (b)(1)(i) to read as follows:

§ 668.47 Institutional security policies and crime statistics.

(a) * * *

(6) * * *

(i) Statistics concerning the occurrence on campus of the following criminal offenses reported to local police agencies or to any official of the institution who has significant responsibility for student and campus activities:

(A) Murder.

(B) Rape (prior to August 1, 1992) or sex offenses, forcible or nonforcible (on or after August 1, 1992).

(C) Robbery.

(D) Aggravated assault.

(E) Burglary.

(F) Motor-vehicle theft; and

* * * * *

(8) Statistics concerning the number of arrests for the following crimes occurring on campus:

(i) Liquor-law violations.

(ii) Drug-abuse violations.
(iii) Weapons possessions.
* * * * *
(b) * * *
(1) Current students and employees by appropriate publications and mailings, through—
(i) Direct mailing to each individual through the U.S. Postal Service, campus mail, or computer network; or
* * * * *

14. Section 668.57 is amended by revising paragraphs (b), (c)(1) introductory text, and (d)(3)(i) to read as follows:

§ 668.57 Acceptable documentation.

* * * * *
(b) *Number of family members in household.* An institution shall require an applicant selected for verification to verify the number of family members in the household by submitting to it a statement signed by the applicant and one of the applicant's parents if the applicant is a dependent student, or the applicant if the applicant is an independent student, listing the name and age of each family member in the household and the relationship of that household member to the applicant.
(c) * * *
(1) Except as provided in § 668.56(b), (c), (d), and (e), an institution shall require an applicant selected for verification to verify annually information included on the application regarding the number of household members in the applicant's family enrolled on at least a half-time basis in postsecondary institutions. The institution shall require the applicant to verify the information by submitting a statement signed by the applicant and one of the applicant's parents, if the applicant is a dependent student, or by the applicant if the applicant is an independent student, listing—
* * * * *
(d) * * *
(3) * * *
(i) A statement signed by the applicant and one of the applicant's parents in the case of a dependent student, or by the applicant in the case of an independent student, certifying the amount of child support received; and
* * * * *

15. Section 668.59 is amended by revising paragraphs (a)(2)(ii) and (c)(2)(ii) to read as follows:

§ 668.59 Consequences of a change in application information.

(a) * * *
(2) * * *
(ii) No dollar amount in excess of $400 as calculated by the net difference between the corrected sum of Adjusted Gross Income (AGI) plus untaxed income minus U.S. taxes paid and the uncorrected sum of Adjusted Gross Income (AGI) plus untaxed income minus U.S. taxes paid. If no Federal Income Tax Return was filed, income earned from work may be used in lieu of Adjusted Gross Income (AGI).
* * * * *
(c) * * *
(2) * * *
(ii) No dollar amount in excess of $400 as calculated by the net difference between the corrected sum of Adjusted Gross Income (AGI) plus untaxed income minus U.S. taxes paid and the uncorrected sum of Adjusted Gross Income (AGI) plus untaxed income minus U.S. taxes paid. If no Federal Income Tax Return was filed, income earned from work may be used in lieu of Adjusted Gross Income (AGI).
* * * * *

16. Section 668.83 is amended by revising paragraphs (f)(2) and (g) to read as follows:

§ 668.83 Emergency action.

* * * * *
(f) * * *
(2) Until a final decision is issued by the Secretary in a proceeding described in paragraph (f)(1) of this section, any action affecting the emergency action is at the sole discretion of the initiating official, or, if a show- cause proceeding is conducted, the show-cause official.
* * * * *
(g) The expiration of an emergency action, or its modification or revocation by the show-cause official, does not bar subsequent emergency action on a ground other than one specifically identified in the notice imposing the prior emergency action. Separate grounds may include violation of an agreement or limitation imposed or resulting from the prior emergency action.
* * * * *

17. Section 668.162 is amended by revising paragraph (1)(iii) under the definition of *Disburse* to read as follows:

§ 668.162 Definitions.

* * * * *
Disburse. * * *
(1) * * *
(iii) Dispensing cash for which an institution obtains a signed receipt from the student, or in the case of a PLUS Loan from the parent borrower; or
* * * * *

18. Section 668.163 is amended by revising paragraph (a)(3) to read as follows:

§ 668.163 Requesting funds.

(a) * * *
(3) *Reimbursement payment method.* (i) The Secretary has sole discretion in determining whether to place an institution on the reimbursement payment method. Before an institution on reimbursement submits a request for cash, the Secretary requires the institution to—
(A) Identify the students for whom the institution is seeking reimbursement that will be included in the institution's request for cash;
(B) Document properly that each student included in the request for cash satisfies all applicable title IV, HEA program requirements and that the disbursements the institution will make to these students are for the correct amounts; and
(C) Credit appropriately the account of each student included in the request for cash.
(ii) Along with an institution's request for cash, the Secretary requires the institution to submit for review any documentation necessary for determining that the institution has complied with the requirements described in paragraphs (a)(3)(i)(B) and (a)(3)(i)(C) of this section and with any other requirements specified by the Secretary. The amount of the institution's request for cash may not exceed the amount of the disbursements the institution will make to students included in that request. When the institution receives the funds, it must disburse the funds immediately and only to the students identified in the institution's request for cash.
(iii) The Secretary approves the institution's request for cash and transfers electronically the amount of that request into a bank account designated by the institution if the Secretary determines that the institution has complied with all of the requirements described in paragraphs (a)(3)(i) and (a)(3)(ii) of this section.
* * * * *

19. Section 668.164 is amended by revising paragraph (a) to read as follows:

§ 668.164 Maintaining funds.

(a) *General.* (1) Except for the requirement described in paragraph (f) of this section, this section does not apply to funds that an institution receives under the FFEL programs. An institution that receives FFEL program funds through electronic funds transfer or by master check must maintain those funds as provided under § 682.207(b).
(2)(i) For funds an institution receives under the Federal Pell Grant, Campus-based, SSIG, and FDSL programs, an institution must maintain a bank

account that meets the requirements under paragraphs (b) or (c) of this section into which the Secretary transfers or the institution deposits Federal funds that the institution receives from the title IV, HEA programs. Except as provided in paragraph (e) of this section, an institution is not required to maintain a separate account for title IV, HEA program funds.

(ii) An institution must—

(A) Notify the bank of the accounts that contain Federal funds and retain a record of that notice in its recordkeeping system; or

(B) Ensure that the name of the account discloses clearly that Federal funds are maintained in that account; and

(iii) File with the appropriate State or municipal government entity a UCC–1 statement disclosing that the account contains Federal funds and maintain a copy of that statement in its records.

* * * * *

20. Section 668.165 is amended by adding paragraph (a)(4) and by revising paragraphs (a)(1), (b)(1), (b)(2) introductory text, (b)(2)(i)(C), (b)(4)(i) introductory text, (c)(2), (d)(1)(i) and (d)(1)(iii) to read as follows:

§ 668.165 Disbursing funds.

(a) * * *

(1) An institution must notify a student or, in the case of a PLUS loan, the student's parent of the amount of title IV, HEA program funds the institution can expect to receive, and how and when those funds will be paid.

* * * * *

(4) If an institution uses student accounts, an institution must disburse a Direct Loan Program Loan by crediting the student's account.

(b) * * *

(1) *General.* In crediting the student's account with title IV, HEA program funds, the institution may apply those funds only to allowable charges described under paragraph (b)(3) of this section, except that the institution may not apply the student's title IV, HEA program funds to any charges the institution assessed the student in a prior award year or period of enrollment. An institution must provide written notification expeditiously to a student or parent, as applicable, that the institution has credited the student's account with Direct Loan or FFEL program funds.

(2) Student account balances. Unless otherwise authorized, by a student or parent borrower, whenever an institution applies title IV, HEA program funds to a student's account and determines that an amount of those funds exceeds, or exceeded, the amount of allowable charges the institution assessed the student, the institution must pay that balance directly to the student, or in the case of a PLUS loan to the parent borrower, as soon as possible but—

(i) * * *

(C) The date the student, or parent borrower rescinds his or her authorization under paragraph (d) of this section; and

* * * * *

(4) * * *

(i) Except as provided in paragraph (b)(4)(ii) of this section, an institution, as a fiduciary for benefit of a student, may hold student funds from the title IV, HEA programs in excess of institutional charges included in paragraph (b)(3) of this section, if the student, or in the case of a PLUS loan the parent borrower, authorizes the institution to retain the excess funds to assist the student in managing those funds. If an institution chooses to hold excess student funds, the institution—

* * * * *

(c) * * *

(2) Except as provided in paragraph (c)(3) of this section, the earliest an institution may directly pay, or credit the account of an enrolled student with title IV, HEA program funds, or in the case of a PLUS Loan pay the parent borrower is—

(i) 10 days before the first day of a payment period or period of enrollment, as applicable; and

(ii) For second and subsequent disbursements of loan funds under the Direct Loan and FFEL programs, 10 days before the first day of a semester, term, or other period of enrollment for which that disbursement is intended.

* * * * *

(d) * * *

(1) * * *

(i) Disburse title IV, HEA program funds by initiating an electronic funds transfer as provided in paragraph (a)(2) of this section;

* * * * *

(iii) Hold excess student funds under paragraph (b)(4) of this section.

* * * * *

21. Section 668.166 is amended by revising paragraph (c)(2)(i) to read as follows:

§ 668.166 Excess cash.

* * * * *

(c) * * *

(2) * * *

(i) Considers the institution to have issued a check on the date that the check cleared the institution's bank account, unless the institution demonstrates to the satisfaction of the Secretary that it issued the check shortly after the institution wrote the check; and

* * * * *

PART 674—FEDERAL PERKINS LOAN PROGRAM

22. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

23. Section 674.16 is amended by revising paragraph (d) to read as follows:

§ 674.16 Making and disbursing loans.

* * * * *

(d)(1)(i) The institution shall disburse funds to a student or the student's account in accordance with the provisions of § 668.165.

(ii) The borrower must sign for each advance of funds on the promissory note, except as provided in paragraph (d)(2) of this section.

(2)(i) In the case of a borrower enrolled in a study-abroad program approved for credit by the home institution in which the borrower is enrolled, the borrower may not be required to sign for any advance of funds made while the borrower is studying abroad if obtaining the borrower's signature would pose an undue hardship on the institution.

(ii) The institution shall properly document the reason for not obtaining the borrower's signature.

* * * * *

[FR Doc. 95–16209 Filed 6–29–95; 8:45 am]

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Friday
June 30, 1995

Part VIII

Department of the Treasury

Fiscal Service

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies; Notice

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circular 570; 1995 Revision]

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies

Effective July 1, 1995.

This Circular is published annually, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of the Circular and interim changes may be obtained directly from the Government Printing Office (202) 512–1800. (Interim changes are published in the **Federal Register** as they occur.) Other information pertinent to Federal sureties may be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700 East West Highway, Room 6F04, Hyattsville, MD 20782, Telephone (FTS/202) 874–6850 or (Fax/202) 874–9978.

For the most current list of Treasury authorized companies, all year round, 24 hours a day, free of charge, use your computer modem and dial into our new and improved computerized public bulletin board system at (FTS/202) 874–6817 or 7034. Please note that the underwriting limitation published herein is on a per bond basis. However, Treasury requirements do not limit the penal sum (face amount) of individual bonds which surety companies may provide. Please refer to footnote (b) at the end of this publication.

The following companies have complied with the law and the regulations of the U.S. Department of the Treasury and are acceptable as sureties and reinsurers on Federal bonds under Title 31 of the United States Code, Sections 9304 to 9308 [See Note (a)].

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

Important information is contained in the notes at the end of this circular. Please read the notes carefully.

See Footnotes/Notes at end of Circular.

Acadia Insurance Company
BUSINESS ADDRESS: P.O. Box 9010, Westbrook, ME 04098–5010. PHONE: (207) 772–4300. UNDERWRITING LIMITATION [b]: $1,413,000. SURETY LICENSES [c]: ME, NH, VT. INCORPORATED IN: Maine.

Acceptance Insurance Company
BUSINESS ADDRESS: 222 South 15th Street, Suite 600 North, Omaha, NE 68102. PHONE: (402) 344–8800. UNDERWRITING LIMITATION [b]: $7,186,000. SURETY LICENSES [c]: AZ, AR, CO, GA, IL, IA, KY, MI, NE, ND, OH, TN, VA, WI. INCORPORATED IN: Nebraska.

Accredited Surety and Casualty Company, Inc.
BUSINESS ADDRESS: P.O. Box 568529, Orlando, FL 32856–8529. PHONE: (407) 841–8500. UNDERWRITING LIMITATION [b]: $596,000. SURETY LICENSES [c]: AL, FL, GA, IN, LA, MD, MS, VA. INCORPORATED IN: Florida.

Acstar Insurance Company
BUSINESS ADDRESS: 233 Main Street, P.O. Box 2350, New Britain, CT 06050–2350. PHONE: (203) 224–2000. UNDERWRITING LIMITATION [b]: $1,694,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Aegis Security Insurance Company
BUSINESS ADDRESS: P.O. Box 3153, Harrisburg, PA 17105. PHONE: (717) 657–9671. UNDERWRITING LIMITATION [b]: $918,000. SURETY LICENSES [c]: AL, AZ, AR, CA, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Aetna Casualty Surety Company of America
BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 952–3043. UNDERWRITING LIMITATION [b]: $17,920,000. SURETY LICENSES [c]: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, LA, ME, MD, MA, MI, MN, MS, MT, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Aetna Casualty and Surety Company (The)
BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 952–3043. UNDERWRITING LIMITATION [b]: $110,813,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Aetna Casualty and Surety Company of Illinois
BUSINESS ADDRESS: 2525 Cabot Drive, Lisle, IL 60532–3629. PHONE: (708) 245–4001. UNDERWRITING LIMITATION [b]: $28,152,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Aetna Life and Casualty Company
BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 952–3043. UNDERWRITING LIMITATION [b]: $327,565,000. SURETY LICENSES [c]: CT, DC, PA. INCORPORATED IN: Connecticut.

Affiliated FM Insurance Company
BUSINESS ADDRESS: Allendale Park, P.O. Box 7500, Johnston, RI 02919–0500. PHONE: (401) 275–3000. UNDERWRITING LIMITATION [b]: $4,371,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Alaska Pacific Assurance Company
BUSINESS ADDRESS: 1601 Chestnut Street, P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761–1000. UNDERWRITING LIMITATION [b]: $1,766,000. SURETY LICENSES [c]: AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, OH, OR, PA, RI, SC, SD, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Alaska.

Allegheny Mutual Casualty Company
BUSINESS ADDRESS: P.O. Box 1116, Meadville, PA 16335–7116. PHONE: (814) 336–2521. UNDERWRITING LIMITATION [b]: $877,000. SURETY LICENSES [c]: DC, FL, IL, IN, LA, MD, MI, NJ, OH, OK, PA, TN, TX, WI. INCORPORATED IN: Pennsylvania.

Allendale Mutual Insurance Company
BUSINESS ADDRESS: Allendale Park, P.O. Box 7500, Johnston, RI 02919–0500. PHONE: (401) 275–3000. UNDERWRITING LIMITATION [b]: $68,507,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Alliance Assurance Company of America
BUSINESS ADDRESS: 25 Independence Blvd., Warren, NJ 07059. PHONE: (212) 753–8130. UNDERWRITING LIMITATION [b]: $11,729,000. SURETY LICENSES [c]: IN, KY, ME. INCORPORATED IN: New York.

Allied Mutual Insurance Company
BUSINESS ADDRESS: 701 5th Avenue, Des Moines, IA 50391–2007. PHONE: (515) 280–4211. UNDERWRITING LIMITATION [b]: $18,441,000. SURETY LICENSES [c]: AZ, AR, CA, CO, DC, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NV, ND, OH, OK, OR, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

ALLSTATE INSURANCE COMPANY
BUSINESS ADDRESS: 3075 Sanders Rd., Ste H1B, Northbrook, IL 60062–7127. PHONE: (708) 402–5000. UNDERWRITING LIMITATION [b]: $442,263,000. SURETY LICENSES [c]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA,

WA, WV, WI, WY. INCORPORATED IN: Illinois.

AMCO Insurance Company
BUSINESS ADDRESS: 701 5th Avenue, Des Moines, IA 50391–2007. PHONE: (515) 280–4211. UNDERWRITING LIMITATION [b]: $13,891,000. SURETY LICENSES [c]: AZ, CA, CO DC, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NM, ND, OH, OR, SD, TN, TX, UT, WI, WY. INCORPORATED IN: Iowa.

American Automobile Insurance Company
BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899–2000. UNDERWRITING LIMITATION [b]: $10,095,000. SURETY LICENSES [c]: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

AMERICAN BANKERS INSURANCE OF FLORIDA
BUSINESS ADDRESS: 11222 Quail Roost Dr., Miami, FL 33157. PHONE: (305) 253–2244. UNDERWRITING LIMITATION [b]: $1,170,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Florida.

American Casualty Company of Reading, Pennsylvania
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822–5000. UNDERWRITING LIMITATION [b]: $23,063,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

American Contractors Indemnity Company
BUSINESS ADDRESS: 9841 Airport Boulevard, Suite 1414, Los Angeles, CA 90045. PHONE: (310) 649–0990. UNDERWRITING LIMITATION [b]: $291,000. SURETY LICENSES [c]: CA, NM. INCORPORATED IN: California.

American Economy Insurance Company
BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46204–1275. PHONE: (317) 262–6262. UNDERWRITING LIMITATION [b]: $37,163,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Employers' Insurance Company
BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725–6522. UNDERWRITING LIMITATION [b]: $17,612,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

American Fidelity Company [1]

American Fire and Casualty Company
BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867–3000. UNDERWRITING LIMITATION [b]: $10,496,000. SURETY LICENSES [c]: AL, AR, CO, DC, FL, GA, KS, KY, LA, MD, MS, NC, SC, TN, TX, VA. INCORPORATED IN: Ohio.

American Guarantee and Liability Insurance Company
BUSINESS ADDRESS: 1400 American Lane, Schaumburg, IL 60196. PHONE: (708) 605–6000. UNDERWRITING LIMITATION [b]: $18,200,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Home Assurance Company
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770–7000. UNDERWRITING LIMITATION [b]: $114,815,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Insurance Company (The)
BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899–2000. UNDERWRITING LIMITATION [b]: $41,932,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

American International Pacific Insurance Company [1]
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770–7000. UNDERWRITING LIMITATION [b]: $1,538,000. SURETY LICENSES [c]: AK, CT, DC, IA, ME, MD, MA, MS, NE, NH, ND, RI, SD, UT, VT, WV. INCORPORATED IN: Colorado.

American Manufacturers Mutual Insurance Company
BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049–0001. PHONE: (708) 540–2414. UNDERWRITING LIMITATION [b]: $17,581,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

American Motorists Insurance Company
BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049–0001. PHONE: (708) 320–2000. UNDERWRITING LIMITATION [b]: $24,398,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

American National Fire Insurance Company
BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369–5000. UNDERWRITING LIMITATION [b]: $1,947,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Re-Insurance Company
BUSINESS ADDRESS: 555 College Road East, P.O. Box 5241, Princeton, NJ 08543. PHONE: (609) 243–4200. UNDERWRITING LIMITATION [b]: $109,634,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

American Reliable Insurance Company
BUSINESS ADDRESS: 8655 East Via De Ventura, Scottsdale, AZ 85258. PHONE: (602) 483–8666. UNDERWRITING LIMITATION [b]: $1,921,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

American Road Insurance Company (The)
BUSINESS ADDRESS: The American Road, Dearborn, MI 48121–6027. PHONE: (800) 234–2722. UNDERWRITING LIMITATION [b]: $34,899,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

American Safety Casualty Insurance Company
BUSINESS ADDRESS: 1900 The Exchange, Suite 450, Atlanta, GA 30339. PHONE: (404) 916–1908. UNDERWRITING LIMITATION [b]: $634,000. SURETY LICENSES [c]: AL, AK, CA, CO, DE, DC, FL, GA, IN, IA, KS, MN, MS, NE, NV, NM, ND, OH, OK, PA, SC, SD, TN, TX, UT, VA, WA, WI. INCORPORATED IN: Delaware.

American States Insurance Company
BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46204–1275. PHONE: (317) 262–6262. UNDERWRITING LIMITATION [b]: $98,072,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME,

MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Surety and Casualty Company
BUSINESS ADDRESS: P.O. Box 24827, Jacksonville, FL 32241–4827. PHONE: (904) 733–6661. UNDERWRITING LIMITATION [b]: $427,000. SURETY LICENSES [c]: FL, GA. INCORPORATED IN: Florida.

American Surety Company
BUSINESS ADDRESS: 3901 West 86th Street, Suite 450, Indianapolis, IN 46268–0932. PHONE: (317) 875–8700. UNDERWRITING LIMITATION [b]: $323,000. SURETY LICENSES [c]: CA, ND, TN, TX. INCORPORATED IN: California.

Amwest Surety Insurance Company
BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365–4500. PHONE: (818) 704–1111. UNDERWRITING LIMITATION [b]: $2,869,000. SURETY LICENSES [c]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

Antilles Insurance Company
BUSINESS ADDRESS: P.O. Box 3507, Old San Juan, PR 00902. PHONE: (809) 721–4900. UNDERWRITING LIMITATION [b]: $1,698,00. SURETY LICENSES [c]: PR. INCORPORATED IN: Puerto Rico.

Arkwright Mutual Insurance Company
BUSINESS ADDRESS: 225 Wyman Street, P.O. Box 9198, Waltham, MA 02254–9198. PHONE: (617) 890–9300. UNDERWRITING LIMITATION [b]: $52,860,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Associated Indemnity Corporation
BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899–2000. UNDERWRITING LIMITATION [b]: $3,553,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

ATLANTIC ALLIANCE FIDELITY AND SURETY COMPANY
BUSINESS ADDRESS: P.O. Box 985, Cherry Hill, NJ 08003. PHONE: (609) 795–5575. UNDERWRITING LIMITATION [b]: $336,000. SURETY LICENSES [c]: AL, DE, DC, FL, GA, IL, MD, MA, MO, NJ, NY, PA, TN, TX. INCORPORATED IN: New Jersey.

Atlantic Mutual Insurance Company
BUSINESS ADDRESS: 45 Wall Street, New York, NY 10005. PHONE: (201) 408–6000. UNDERWRITING LIMITATION [b]: $24,135,000. SURETY LICENSES [c]: AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Auto-Owners Insurance Company
BUSINESS ADDRESS: P.O. Box 30660, Lansing, MI 48909. PHONE: (517) 323–1200. UNDERWRITING LIMITATION [b]: $111,544,000. SURETY LICENSES [c]: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MI, MN, MO, NE, NM, NC, ND, OH, OR, SC, SD, TN, TX, VA, WI. INCORPORATED IN: Michigan.

BANKERS INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 15707, St. Petersburg, FL 33733–5707. PHONE: (813) 823–4000. UNDERWRITING LIMITATION [b]: $942,000. SURETY LICENSES [c]: AL, AZ, AR, CA, DE, DC, FL, GA, IL, IA, KY, LA, MS, MO, MT, NV, NM, NC, OH, OK, PA, SC, SD, TN, TX, VA. INCORPORATED IN: Florida.

BITUMINOUS CASUALTY CORPORATION
BUSINESS ADDRESS: 320—18th Street, Rock Island, IL 61201. PHONE: (309) 786–5401 x-268. UNDERWRITING LIMITATION [b]: $10,619,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois

BOND SAFEGUARD INSURANCE COMPANY
BUSINESS ADDRESS: 246 E. Janata Blvd., Lombard, IL 60148. PHONE: (708) 495–9380. UNDERWRITING LIMITATION [b]: $397,000. SURETY LICENSES [c]: IL, IN, KS, MO, NC, OK, TN, TX. INCORPORATED IN: Illinois.

Boston Old Colony Insurance Company
BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395–2000. UNDERWRITING LIMITATION [b]: $863,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Buckeye Union Insurance Company (The)
BUSINESS ADDRESS: P.O. Box 1499, Columbus, OH 43216. PHONE: (609) 395–2000. UNDERWRITING LIMITATION [b]: $12,731,000. SURETY LICENSES [c]: AK, DC, FL, IL, IN, IA, KS, KY, MD, MI, MO, NY, OH, PA, RI, SD, VA, WV. INCORPORATED IN: Ohio.

Capitol Indemnity Corporation
BUSINESS ADDRESS: P.O. Box 5900, Madison, WI 53705–0900. PHONE: (608) 231–4450. UNDERWRITING LIMITATION [b]: $4,065,000. SURETY LICENSES [b]: AZ, AR, CO, DE, FL, ID, IL, IN, IA, KS, KY, LA, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, OR, PA, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Wisconsin.

Centennial Insurance Company
BUSINESS ADDRESS: 45 Wall Street, New York, NY 10005. PHONE: (201) 408–6000 x-0434. UNDERWRITING LIMITATION [b]: $15,970,000. SURETY LICENSES [b]: AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Century Indemnity Company
BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761–1000. UNDERWRITING LIMITATION [b]: $1,076,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

CENTURY SURETY COMPANY
BUSINESS ADDRESS: P.O. Box 163340, Columbus, OH 43216–3340. PHONE: (614) 895–2000. UNDERWRITING LIMITATION [b]: $1,902,000. SURETY LICENSES [c]: AZ, IN, OH, WV, WI. INCORPORATED IN: Ohio.

Charter Oak Fire Insurance Company (The)
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183–6014. PHONE: (203) 277–0111. UNDERWRITING LIMITATION [b]: $12,600,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Chartwell Reinsurance Company
BUSINESS ADDRESS: 300 Atlantic Street, Suite 400, Stamford, CT 06901. PHONE: (203) 961–7300. UNDERWRITING LIMITATION [b]: $9,775,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, DE, DC, GA, HI, ID, IL, IN, KS, KY, MD, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, ND, OH, PA, TN, TX, UT, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Chatham Reinsurance Corporation
BUSINESS ADDRESS: 26 Main Street, Chatham, NJ 07928. PHONE: (201) 635–4000. UNDERWRITING LIMITATION [b]: $2,562,000. SURETY LICENSES [c]: CA, CO, DC, ID, IA, MD, MA, MI, MN, NE, NJ, NY, OK, SD, UT. INCORPORATED IN: California.

CHRISTIANIA GENERAL INSURANCE CORPORATION OF NEW YORK
BUSINESS ADDRESS: 120 White Plains Road, Tarrytown, NY 10591–0005. PHONE: (914) 333–9200. UNDERWRITING LIMITATION [b]: $9,866,000. SURETY LICENSES [c]: AL, AK, AR, CA, DC, IA, KY, MD, MS, NV, NY, ND, OH, PA, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: New York.

CHRYSLER INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 5168, Southfield, MI 48086–5168. PHONE: (810) 948–3390. UNDERWRITING

LIMITATION [b]: $8,393,000. SURETY LICENSES [c]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Michigan.

CHUBB INSURANCE COMPANY
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061–1615. PHONE: (908) 903–2000. UNDERWRITING LIMITATION [b]: $912,000. SURETY LICENSES [c]: AK, AZ, CA, CT, DE, DC, GA, IL, IA, KY, LA, MD, MA, MN, MO, MT, NJ, NY, OH, OR, PA, RI, SC, TN, TX, VA, WA, WI. INCORPORATED IN: New York.

CIGNA Insurance Company of Illinois
BUSINESS ADDRESS: 8755 West Higgins Rd., Chicago, IL 60631. PHONE: (312) 380–8100. UNDERWRITING LIMITATION [b]: $2,246,000. SURETY LICENSES [c]: IL. INCORPORATED IN: Illinois.

CIGNA Insurance Company of Texas
BUSINESS ADDRESS: 600 East Las Colinas Blvd., Suite 620, Irving, TX 75039. PHONE: (214) 869–8500. UNDERWRITING LIMITATION [b]: $2,650,000. SURETY LICENSES [c]: NM, OK, TX. INCORPORATED IN: Texas.

CIGNA Insurance Company of the Midwest
BUSINESS ADDRESS: 9200 Keystone Crossing, P.O. Box 80995, Suite 303, Indianapolis, IN 46280. PHONE: (215) 761–1000. UNDERWRITING LIMITATION [b]: $1,696,000. SURETY LICENSES [c]: IN. INCORPORATED IN: Indiana.

Cincinnati Casualty Company (The)
BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250–5496. PHONE: (513) 870–2000. UNDERWRITING LIMITATION [b]: $9,260,000. SURETY LICENSES [c]: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MD, MI, MS, MO, NE, NM, NC, OH, OK, PA, SC, SD, TN, TX, UT, VT, VA, WV, WI, WY. INCORPORATED IN: Ohio.

Cincinnati Insurance Company (The)
BUSINESS ADDRESS: Post Office Box 145496, Cincinnati, OH 45250–5496. PHONE: (513) 870–2000. UNDERWRITING LIMITATION [b]: $89,193,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio

COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
BUSINESS ADDRESS: 210 North Charles Street, Baltimore, MD 21201. PHONE: (410) 539–0800. UNDERWRITING LIMITATION [b]: $1,456,000. SURETY LICENSES [c]: DC, IA, KS, MD, MO, OH, TX, VA. INCORPORATED IN: Maryland.

COLONIAL SURETY COMPANY
BUSINESS ADDRESS: 50 Chestnut Ridge Road, Montvale, NJ 07645. PHONE: (201) 573–8788. UNDERWRITING LIMITATION [b]: $232,000. SURETY LICENSES [c]: DE, DC, MD, MA, NJ, NM, PA. INCORPORATED IN: Pennsylvania.

Commercial Casualty Insurance Company of Georgia
BUSINESS ADDRESS: 160 Technology Parkway, Norcross, GA 30092–2911. PHONE: (404) 729–8101 UNDERWRITING LIMITATION [b]: $604,000. SURETY LICENSES [c]: FL, GA. INCORPORATED IN: Georgia.

Commercial Insurance Company of Newark, New Jersey
BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395–2000. UNDERWRITING LIMITATION [b]: $1,604,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

Commercial Union Insurance Company
BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725–6522. UNDERWRITING LIMITATION [b]: $48,967,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

CONNECTICUT INDEMNITY COMPANY (THE)
BUSINESS ADDRESS: P.O. Box 420, Hartford, CT 06141. PHONE: (203) 674–6600. UNDERWRITING LIMITATION [b]: $3,117,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Continental Casualty Company
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822–5000. UNDERWRITING LIMITATION [b]: $284,508,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois..

Continental Insurance Company (The)
BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395–2000 UNDERWRITING LIMITATION [b]: $28,161,000. SURETY LICENSES [c]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

CONTINENTAL INSURANCE COMPANY OF PUERTO RICO (THE)
BUSINESS ADDRESS: P.O. Box 431, San Patricio Plaza, PMC, Guaynabo, PR 00968–2615. PHONE: (809) 793–6111 UNDERWRITING LIMITATION [b]: $13,559,000. SURETY LICENSES [c]: PR. INCORPORATED IN: Puerto Rico.

Continental Reinsurance Corporation
BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (21) 440–7800 UNDERWRITING LIMITATION [b]: $19,955,000. SURETY LICENSES [c]: AK, AZ, AR, CA, CO, DC, FL, HI, ID, IL, IN, IA, LA, MI, MS, MT, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PR, TX, UT, VA, WA, WY. INCORPORATED IN: California.

Continental Western Insurance Company
BUSINESS ADDRESS: P.O. Box 1594 Des Moines, IA 50306. PHONE: (515) 278–3000. UNDERWRITING LIMITATION [b]: $7,674,000. SURETY LICENSES [c]: AZ, AR, CO, ID, IL, IN, IA, KS, KY, ME, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TN, TX, UT, WI, WY. INCORPORATED IN: Iowa.

CONTRACTORS BONDING AND INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 9271, Seattle, WA 98109–0271. PHONE: (206) 622–7053. UNDERWRITING LIMITATION [b]: $1,710,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

Cooperativa de Seguros Multiples de Puerto Rico
BUSINESS ADDRESS: G.P.O. Box 363846 San Juan, PR 00936–3846. PHONE: (809) 758–8585. UNDERWRITING LIMITATION [b]: $9,068,000. SURETY LICENSES [c]: PR. INCORPORATED IN: Puerto Rico.

CREDIT GENERAL INSURANCE COMPANY
BUSINESS ADDRESS: 709 Brookpark Road, Cleveland, OH 44109. PHONE: (216) 778–6920. UNDERWRITING LIMITATION [b]: $1,705,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, PA, SC, SD, TN, UT, VA, WA, WV, WI. INCORPORATED IN: Ohio.

CUMBERLAND CASUALTY & SURETY COMPANY [2]
BUSINESS ADDRESS: 4311 West Waters Avenue, Suite 401, TAMPA, FL 33614. PHONE: (813) 885–2112. UNDERWRITING LIMITATION [b]: $492,000. SURETY LICENSES [c]: DE, DC, FL, GA, GU, ID, IN, LA, MD, MA, MO, MT, NE, NV, ND, OR, SC, SD, TX, WY. INCORPORATED IN: Florida.

Cumberland Surety Insurance Company, Inc.
BUSINESS ADDRESS: 367 West Short Street, Lexington, KY 40507. PHONE: (800) 767–8622. UNDERWRITING LIMITATION [b]: $381,000. SURETY LICENSES [c]: DC, FL, IL, IN, KY, MS, OH, TN. INCORPORATED IN: Kentucky.

CUMIS INSURANCE SOCIETY, INC
BUSINESS ADDRESS: Post Office Box 1084, Madison, WI 53701. PHONE: (608)

238–5851. UNDERWRITING LIMITATION [b]: $17,390,000. SURETY LICENSES[c]: AL, AK, AS, AZ, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DAIRYLAND INSURANCE COMPANY
BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. PHONE: (715) 346–6000. UNDERWRITING LIMITATION [b]: $21,681,000. SURETY LICENSES[c]: AL, AK, AZ, AR, CA, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DELTA CASUALTY COMPANY
BUSINESS ADDRESS: 4711 North Clark Street, Chicago, IL 60640. PHONE: (312) 878–8500. UNDERWRITING LIMITATION [b]: $645,000. SURETY LICENSES[c]: IL, IA. INCORPORATED IN: Illinois.

DEVELOPERS INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92713. PHONE: (714) 263–3300. UNDERWRITING LIMITATION [b]: $583,000 SURETY LICENSES[c]: AZ, CA, NV, OR, UT, WA. INCORPORATED IN: California.

Developers Surety and Indemnity Company [3]
BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92713. PHONE: (714) 263–3310. UNDERWRITING LIMITATION [b]: $333,000 SURETY LICENSES[c]: AZ, CO, DC, ID, IL, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, WI, WY. INCORPORATED IN: Iowa.

DIAMOND STATE INSURANCE COMPANY
BUSINESS ADDRESS: Three Bala Plaza East, Suite 300, Bala Cynwyd, PA 19004. PHONE: (610) 664–1500. UNDERWRITING LIMITATION [b]: $1,641,000. SURETY LICENSES[c]: AL, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NC, ND, OH, OK, OR, RI, SC, SD, TN, UT, VT, VA, WA, WV, WY. INCORPORATED IN: Indiana.

Empire Fire and Marine Insurance Company
BUSINESS ADDRESS: 1624 Douglas Street, Omaha, NE 68102. PHONE: (402) 341–0135. UNDERWRITING LIMITATION [b]: $9,305,000. SURETY LICENSES[c]: AL, AK, AZ, AR, CA, CO, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

EMPLOYERS' FIRE INSURANCE COMPANY (THE)
BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725–6000. UNDERWRITING LIMITATION [b]: $7,578,000. SURETY LICENSES[c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

EMPLOYERS INSURANCE OR WAUSAU A Mutual Company
BUSINESS ADDRESS: P.O. Box 8017 Wausau, WI 54402–8017. PHONE: (715) 845–5211. UNDERWRITING LIMITATION [b]: $44,270,000. SURETY LICENSES[c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Employers Mutual Casualty Company
BUSINESS ADDRESS: P.O. Box 712, Des Moines, IA 50303–0712. PHONE: (515) 280—2511. UNDERWRITING LIMITATION [b]: $29,341,000. SURETY LICENSES[c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Employers Reinsurance Corporation
BUSINESS ADDRESS: P.O. Box 2991, Overland Park, KS 66201–1391. PHONE: (913) 676–5200. UNDERWRITING LIMITATION [b]: $206,978,000. SURETY LICENSES[c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Erie Insurance Company
BUSINESS ADDRESS: 100 Erie Insurance Place, Erie, PA 16530. PHONE: (814) 870–2000. UNDERWRITING LIMITATION [b]: $4,251,000. SURETY LICENSES[c]: DC, IN, KY, MD, NY, NC, OH, PA, TN, VA, WV. INCORPORATED IN: Pennsylvania.

EXPLORER INSURANCE COMPANY (THE)
BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186–5563. PHONE: (619) 546–2400. UNDERWRITING LIMITATION [b]: $1,827,000. SURETY LICENSES[c]: AZ, CA, ID, IL, IA, MT, NV, MN, OR, TX, UT. INCORPORATED IN: Arizona.

FAR WEST INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365–4500. PHONE: (818) 704–1111. UNDERWRITING LIMITATION [b]: $531,000. SURETY LICENSES[c]: AK, AZ, AR, CA, CO, DE, DC, HI, ID, IN, MN, MO, MT, NE, NV, NJ, NM, OH, OR, PA, RI, SD, TX, UT, WA, WY. INCORPORATED IN: California.

Farmers Alliance Mutual Insurance Company
BUSINESS ADDRESS: 1122 North Main Street, McPherson, KS 67460. PHONE: (316) 241–2200. UNDERWRITING LIMITATION [b]: $5,026,000. SURETY LICENSES[c]: AZ, CO, ID, IN, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, TX, WY. INCORPORATED IN: Kansas

Farmington Casualty Company
BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 952–3043. UNDERWRITING LIMITATION [b]: $16,802,000. SURETY LICENSES[c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Farmland Mutual Insurance Company
BUSINESS ADDRESS: 1963 Bell Avenue, Des Moines, IA 50315. PHONE: (515) 245–8800. UNDERWRITING LIMITATION [b]: $6,282,000. SURETY LICENSES [c]: AR, CO, ID, IL, IN, IA, KS, KY, MI, MN, MS, MO, MT, NE, NV, ND, OH, OK, OR, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

Federal Insurance Company
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061–1615. PHONE: (908) 903–2000. UNDERWRITING LIMITATION [b]: $187,693,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Federated Mutual Insurance Company
BUSINESS ADDRESS: 121 East Park Square, Owatonna, MN 55060. PHONE: (507) 455–5200. UNDERWRITING LIMITATION [b]: $54,173,000. SURETY LICENSES [c]: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Fidelity and Casualty Company of New York (The)
BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395–2000. UNDERWRITING LIMITATION [b]: $10,025,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Fidelity and Deposit Company of Maryland
BUSINESS ADDRESS: 210 North Charles Street, Baltimore, MD 21201. PHONE: (410) 539–0800. UNDERWRITING LIMITATION [b]: $22,474,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

Fidelity and Guaranty Insurance Company
BUSINESS ADDRESS: TW3001, P.O. Box 1138, Baltimore, MD 21203. PHONE: (410) 547–3000. UNDERWRITING LIMITATION [b]: $1,437,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO,

MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Fidelity and Guaranty Insurance Underwriters, Inc.[4]
BUSINESS ADDRESS: TW3001, P.O. Box 1138, Baltimore, MD 21203. PHONE: (410) 547–3000. UNDERWRITING LIMITATION[b]: $2,550,000. SURETY LICENSES[c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: Wisconsin.

Financial Pacific Insurance Company
BUSINESS ADDRESS: P.O. Box 292220, Sacramento, CA 95829–2220. PHONE: (916) 381–8067. UNDERWRITING LIMITATION[b]: $577,000. SURETY LICENSES[c]: CA. INCORPORATED IN: California.

Fireman's Fund Insurance Company
BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899–2000. UNDERWRITING LIMITATION[b]: $181,133,000. SURETY LICENSES[c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Firemen's Insurance Company of Newark, New Jersey
BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395–2000. UNDERWRITING LIMITATION[b]: $16,321,000. SURETY LICENSES[c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

First Community Insurance Company
BUSINESS ADDRESS: 360 Central Avenue, St. Petersburg, FL 33701. PHONE: (813) 823–4000. UNDERWRITING LIMITATION[b]: $635,000. SURETY LICENSES[c]: AL, AK, AZ, FL, HI, ID, IL, IN, IA, KY, MD, MA, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, RI, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

First Financial Insurance Company
BUSINESS ADDRESS: 238 Smith School Road, Burlington, NC 27215. PHONE: (910) 538–2800. UNDERWRITING LIMITATION[b]: $2,833,000. SURETY LICENSES[c]: AL, AK, AZ, AR, CA, CO, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, ND, OH, OR, RI, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

First Insurance Company of Hawaii, Ltd.
BUSINESS ADDRESS: P.O. Box 2866, Honolulu, HI 96803. PHONE: (808) 527–7324. UNDERWRITING LIMITATION[b]: $5,498,000. SURETY LICENSES[c]: GU, HI. INCORPORATED IN: Hawaii.

First National Insurance Company of America
BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545–5000. UNDERWRITING LIMITATION[b]: $5,979,000. SURETY LICENSES[c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

Frontier Insurance Company[5]
BUSINESS ADDRESS: 195 Lake Louise Marie Road, Rock Hill, NY 12775–8000. PHONE: (914) 796–2100. UNDERWRITING LIMITATION[b]: $8,874,000. SURETY LICENSES[c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Frontier Pacific Insurance Company
BUSINESS ADDRESS: 6404 Wilshire Blvd. #850, Los Angeles, CA 90048–5510. PHONE: (213) 653–4058 x–521. UNDERWRITING LIMITATION[b]: $1,613,000. SURETY LICENSES[c]: CA, NV. INCORPORATED IN: California.

General Accident Insurance Company (Puerto Rico) Limited
BUSINESS ADDRESS: P.O. Box 363786, San Juan, PR 00936–3786. PHONE: (809) 765–8700. UNDERWRITING LIMITATION[b]: $5,038,000. SURETY LICENSES[c]: PR, VI. INCORPORATED IN: Puerto Rico.

General Accident Insurance Company of America
BUSINESS ADDRESS: 436 Walnut Street, P.O. Box 1109, Philadelphia, PA 19105–1109. PHONE: (215) 625–1000. UNDERWRITING LIMITATION[b]: $93,886,000. SURETY LICENSES[c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

General Insurance Company of America
BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545–5000. UNDERWRITING LIMITATION[b]: $54,659,000. SURETY LICENSES[c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Washington.

General Reinsurance Corporation
BUSINESS ADDRESS: 695 East Main Street, P.O. Box 10350, Stamford, CT 06904–2350. PHONE: (203) 328–5000. UNDERWRITING LIMITATION[b]: $329,153,000. SURETY LICENSES[c]: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Glens Falls Insurance Company (The)
BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395–2000. UNDERWRITING LIMITATION[b]: $872,000. SURETY LICENSES[c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Global Surety & Insurance Co.
BUSINESS ADDRESS: 3555 Farnam Street, Omaha, NE 68131. PHONE: (402) 271–2846. UNDERWRITING LIMITATION[b]: $3,548,000. SURETY LICENSES[c]: AZ, CA, CO, NE. INCORPORATED IN: Nebraska.

Grain Dealers Mutual Insurance Company
BUSINESS ADDRESS: P.O. Box 1747, Indianapolis, IN 46206. PHONE: (317) 923–2453. UNDERWRITING LIMITATION[b]: $2,773,000. SURETY LICENSES[c]: AZ, AR, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, NE, NV, NM, NC, OH, OK, OR, SD, TN, TX, VA, WA, WI, WY. INCORPORATED IN: Indiana.

Gramercy Insurance Company
BUSINESS ADDRESS: 110 South French Street #203, Wilmington, DE 19801. PHONE: (302) 571–0525. UNDERWRITING LIMITATION[b]: $272,000. SURETY LICENSES[c]: DE, LA, MD, NM, OK, TX. INCORPORATED IN: Delaware.

Granite State Insurance Company
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770–7000. UNDERWRITING LIMITATION[b]: $1,503,000. SURETY LICENSES[c]: AL, AK, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Great American Insurance Company
BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369–5000. UNDERWRITING LIMITATION[b]: $84,457,000. SURETY LICENSES[c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Great Northern Insurance Company
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061–1615. PHONE: (908) 903–2000. UNDERWRITING LIMITATION[b]: $11,191,000. SURETY LICENSES[c]: AL, AK, AZ, AR, CO, DC, FL, GA, HI, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Gulf Insurance Company

BUSINESS ADDRESS: P.O. Box 1771, Dallas, TX 75221–1771. PHONE: (214) 650–2800. UNDERWRITING LIMITATION [b]: $23,005,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Hamilton Mutual Insurance Company of Cincinnati, Ohio (The)

BUSINESS ADDRESS: 1520 Madison Road, Cincinnati, OH 45206–1787. PHONE: (513) 221–6010. UNDERWRITING LIMITATION [b]: $861,000. SURETY LICENSES [c]: IN, KY, MI, OH, TN. INCORPORATED IN: Ohio.

Hanover Insurance Company (The)

BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. PHONE: (508) 853–7200. UNDERWRITING LIMITATION [b]: $87,475,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Harco National Insurance Company

BUSINESS ADDRESS: P.O. Box 68309, Schaumburg, IL 60168–0309. PHONE: (708) 734–4100. UNDERWRITING LIMITATION [b]: $4,032,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Harleysville Mutual Insurance Company

BUSINESS ADDRESS: 355 Maple Avenue, Harleysville, PA 19438–2297. PHONE: (215) 256–5000. UNDERWRITING LIMITATION [b]: $26,789,000. SURETY LICENSES [c]: AR, CA, CO, DE, DC, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, NJ, NM, NC, OH, PA, SC, TN, TX, UT, VA, WV, WI. INCORPORATED IN: Pennsylvania.

Hartford Accident and Indemnity Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547–5000. UNDERWRITING LIMITATION [b]: $123,249,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Casualty Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547–5000. UNDERWRITING LIMITATION [b]: $24,372,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Fire Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547–5000. UNDERWRITING LIMITATION [b]: $130,418,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Insurance Company of Illinois

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547–5000. UNDERWRITING LIMITATION [b]: $31,255,000. SURETY LICENSES [c]: IL, PA. INCORPORATED IN: Illinois.

Hartford Insurance Company of the Midwest

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547–5000. UNDERWRITING LIMITATION [b]: $3,651,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Insurance Company of the Southeast

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547–5000. UNDERWRITING LIMITATION [b]: $2,289,000. SURETY LICENSES [c]: CT, FL, GA, LA, PA. INCORPORATED IN: Florida.

Hartford Underwriters Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547–5000. UNDERWRITING LIMITATION [b]: $10,524,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Heritage Mutual Insurance Company [6]

BUSINESS ADDRESS: 2800 South Taylor Drive, P.O. Box 58, Sheboygan, WI 53082–0058. PHONE: (414) 458–9131. UNDERWRITING LIMITATION [b]: $8,336,000. SURETY LICENSES [c]: AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, MI, MN, MO, NE, NV, ND, OH, OR, PA, SD, TN, TX, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Highlands Insurance Company

BUSINESS ADDRESS: 10370 Richmond Avenue, Houston, TX 77042–4123. PHONE: (713) 952–9555. UNDERWRITING LIMITATION [b]: $18,093,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, FA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Texas.

Highlands Underwriters Insurance Company

BUSINESS ADDRESS: 10370 Richmond Avenue, Houston, TX 77042–4123. PHONE: (713) 952–9555. UNDERWRITING LIMITATION [b]: $2,805,000. SURETY LICENSES [c]: AL, AZ, AR, CA, FL, GA, LA, MS, NM, OK, TX. INCORPORATED IN: Texas.

Houston General Insurance Company

BUSINESS ADDRESS: P.O. Box 2932, Fort Worth, TX 76113–2932. PHONE: (817) 377–6000. UNDERWRITING LIMITATION [b]: $5,350,000. SURETY LICENSES [c]: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NJ, NM, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Texas.

Illinois National Insurance Co.

BUSINESS ADDRESS: 500 West Madison Street, Chicago, IL 60606–2511. PHONE: (312) 930–5417. UNDERWRITING LIMITATION [b]: $1,744,000. SURETY LICENSES [c]: AK, IL, IN, IA, KY, MD, MI, MO, MT, NE, NV, NH, NM, NY, ND, OH, RI, SD, TX, UT, VT, WV, WY. INCORPORATED IN: Illinois.

Indemnity Company of California

BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92713. PHONE: (714) 263–3300. UNDERWRITING LIMITATION [b]: $771,000. SURETY LICENSES [c]: AZ, CA, NV, OR, UT, WA. INCORPORATED IN: California.

Indemnity Insurance Company of North America

BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761–1000. UNDERWRITING LIMITATION [b]: $20,451,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Indiana Lumbermens Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 68600, Indianapolis, IN 46268–1168. PHONE: (800) 428–1441 x–710. UNDERWRITING LIMITATION [b]: $2,812,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Inland Insurance Company

BUSINESS ADDRESS: P.O. Box 80468, Lincoln, NE 68501. PHONE: (402) 435–4302. UNDERWRITING LIMITATION [b]: $3,920,000. SURETY LICENSES [c]: AZ, CO, IA, KS, MN, MT, NE, ND, OK, SD, WY. INCORPORATED IN: Nebraska.

Insurance Company of Evanston [7]

Insurance Company of North America

BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761–1000. UNDERWRITING LIMITATION [b]: $33,729,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Insurance Company of the State of Pennsylvania

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770–7000. UNDERWRITING LIMITATION [b]: $38,800,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SC, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Insurance Company of the West

BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186–5563. PHONE: (619) 546–2400. UNDERWRITING LIMITATION [b]: $10,352,000. SURETY LICENSES [c]: AK, AZ, CA, CO, HI, ID, IL, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, OH, OK, OR, RI, SC, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: California.

Integrand Assurance Company

BUSINESS ADDRESS: P.O. Box 70128, San Juan, PR 00936–8128. PHONE: (809) 781–0708 x–269. UNDERWRITING LIMITATION [b]: $3,309,000. SURETY LICENSES [c]: PR, VI. INCORPORATED IN: Puerto Rico.

Intercargo Insurance Company

BUSINESS ADDRESS: 1450 East American Lane, 20th Floor, Schaumburg, IL 60173. PHONE: (708) 517–2510. UNDERWRITING LIMITATION [b]: $2,237,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, GU, HI, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, VI, WA, WI. INCORPORATED IN: Illinois.

International Business & Mercantile Reassurance Company

BUSINESS ADDRESS: 307 N. Michigan Ave., Chicago, IL 60601. PHONE: (312) 346–8100. UNDERWRITING LIMITATION [b]: $9,785,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

International Fidelity Insurance Company

BUSINESS ADDRESS: One Newark Center, 20th Floor, Newark, NJ 07102–5207. PHONE: (201) 624–7200 x–226. UNDERWRITING LIMITATION [b]: $2,708,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: New Jersey.

Island Insurance Company, Limited

BUSINESS ADDRESS: P.O. Box 1520, Honolulu, HI 96806. PHONE: (808) 531–1311. UNDERWRITING LIMITATION [b]: $5,791,000. SURETY LICENSES [c]: HI. INCORPORATED IN: Hawaii.

ITT Lyndon Property Insurance Company

BUSINESS ADDRESS: 645 Maryville Centre Drive, St. Louis, MO 63141. PHONE: (314) 542–3636. UNDERWRITING LIMITATION [b]: $9,076,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

John Deere Insurance Company

BUSINESS ADDRESS: 3400 80th Street, Moline, IL 61265. PHONE: (800) 447–0633. UNDERWRITING LIMITATION [b]: $9,188,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Kansas Bankers Surety Company (The)

BUSINESS ADDRESS: P.O. Box 1654, Topeka, KS 66601–1654. PHONE: (913) 234–2631. UNDERWRITING LIMITATION [b]: $3,835,000. SURETY LICENSES [c]: AR, CO, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, ND, OK, SD, TN, WI, WY. INCORPORATED IN: Kansas.

Kansas City Fire and Marine Insurance Company

BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. PHONE: (609) 395–2000. UNDERWRITING LIMITATION [b]: $1,394,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Kemper Reinsurance Company

BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049. PHONE: (708) 320–2600. UNDERWRITING LIMITATION [b]: $41,602,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, NE, NV, NJ, NM, OH, OK, OR, PA, RI, TN, UT, WA, WI. INCORPORATED IN: Illinois.

Liberty Mutual Insurance Company

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357–9500. UNDERWRITING LIMITATION [b]: $188,393,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Lincoln General Insurance Company

BUSINESS ADDRESS: 3350 Whiteford Road, York, PA 17402. PHONE: (717) 757–0000. UNDERWRITING LIMITATION [b]: $2,501,000. SURETY LICENSES [c]: AL, CO, GA, ID, IN, IA, KS, KY, LA, MD, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, UT, VA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

London Assurance of America Inc. (The)

BUSINESS ADDRESS: 25 Independence Blvd., Warren, NJ 07059. PHONE: (212) 753–8130. UNDERWRITING LIMITATION [b]: $17,807,000. SURETY LICENSES [c]: AK, IA, ME, MI, MN, NJ, NY, ND, OH, UT, VT. INCORPORATED IN: New York.

Lumbermens Mutual Casualty Company

BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049–0001. PHONE: (708) 320–2000. UNDERWRITING LIMITATION [b]: $71,163,000. SURETY LICENSES [c]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Markel Insurance Company [7]

BUSINESS ADDRESS: Shand Morahan Plaza, Evanston, IL 60201. PHONE: (708) 866–2800. UNDERWRITING LIMITATION [b]: $2,558,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Massachusetts Bay Insurance Company [8]

BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. PHONE: (508) 853–7200. UNDERWRITING LIMITATION [b]: $1,521,000. SURETY LICENSES [c]: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, TN, TX, VT, VA, WA, WV, WI. INCORPORATED IN: New Hampshire.

Merchants Bonding Company (Mutual)

BUSINESS ADDRESS: 2100 Grand Avenue, Des Moines, IA 50312. PHONE: (515) 243–8171. UNDERWRITING LIMITATION [b]: $1,209,000. SURETY LICENSES [c]: AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Iowa.

Michigan Millers Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 30060, Lansing, MI 48909–7560. PHONE: (517) 482–6211. UNDERWRITING LIMITATION [b]: $6,925,000. SURETY LICENSES [c]: AZ, AR, CA, CO, FL, ID, IN, KS, KY, MI, MO, NE, NY, NC, OH, OK, PA, TX, UT, VA, WA, WI. INCORPORATED IN: Michigan.

Mid-Century Insurance Company

BUSINESS ADDRESS: P.O. Box 2478, Terminal Annex, Los Angeles, CA 90051. PHONE: (213) 932–3200. UNDERWRITING LIMITATION [b]: $29,424,000. SURETY LICENSES [c]: AL, AZ, AR, CA, CO, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: California.

Mid-Continent Casualty Company

BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK, 74101. PHONE: (918) 587–7221 x-200. UNDERWRITING LIMITATION [b]: $5,165,000. SURETY LICENSES [c]: AL, AZ, AR, CO, IL, IN, IA, KS, MN, MS, MO, MT, NE, NM, ND, OK, TX, UT, WA. INCORPORATED IN: Oklahoma.

Mid-State Surety Corporation

BUSINESS ADDRESS: 3400 East Lafayette, Detroit, MI 48207. PHONE: (313) 882–7979. UNDERWRITING LIMITATION [b]:

$554,000. SURETY LICENSES [c]: MI. INCORPORATED IN: Michigan.

Midwestern Indemnity Company (The) [9]
BUSINESS ADDRESS: 1700 Edison Drive, Milford, OH 45150. PHONE: (513) 576–3200. UNDERWRITING LIMITATION [b]: $7,126,000. SURETY LICENSES [c]: AL, GA, IN, IA, KS, KY, MI, MN, MS, MO, NE, NC, OH, PA, TN, VA, WV, WI. INCORPORATED IN: Ohio.

Millers Mutual Fire Insurance Company (The) [10]
BUSINESS ADDRESS: P.O. Box 2269, Fort Worth, TX 76113–2269. PHONE: (817) 332–7761. UNDERWRITING LIMITATION [b]: $5,725,000. SURETY LICENSES [c]: AL, AZ, CA, CO, DC, ID, IL, IN, IA, KY, LA, MI, MN, MS, NE, ND, OH, OK, OR, SC, SD, TN, TX, UT, WA, WY. INCORPORATED IN: Texas.

Millers Mutual Fire Insurance Company of Texas (The) [10]

Millers Mutual Insurance Association
BUSINESS ADDRESS: 111 East Fourth Street, P.O. Box 9006, Alton, IL 62002–9006. PHONE: (618) 463–3636. UNDERWRITING LIMITATION [b]: $3,656,000. SURETY LICENSES [c]: AL, AR, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, MT, NE, NC, ND, OH, SD, TN, TX, WI. INCORPORATED IN: Illinois.

Minnesota Trust Company of Austin
BUSINESS ADDRESS: P.O. Box 463, Austin, MN 55912–0463. PHONE: (507) 437–3231. UNDERWRITING LIMITATION [b]: $155,000. SURETY LICENSES [c]: CO, MN, MT, ND, SD, UT. INCORPORATED IN: Minnesota.

Motors Insurance Corporation
BUSINESS ADDRESS: 3044 West Grand Blvd., Detroit, MI 48202. Phone: (313) 556–5000. UNDERWRITING LIMITATION [b]: $77,930,000. SURETY LICENSES [c]: AL, AK, AZ, AR, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Mountbatten Surety Company, Inc. (The)
BUSINESS ADDRESS: 33 Rock Hill Road Bala Cynwyd, PA 19004. PHONE: (610) 664–2259. UNDERWRITING LIMITATION [b]: $647,000. SURETY LICENSES [c]: DE, MD, PA. INCORPORATED IN: Pennsylvania.

Munich American Reinsurance Company
BUSINESS ADDRESS: 560 Lexington Avenue, New York, NY 10022. PHONE: (212) 310–1600. UNDERWRITING LIMITATION [b]: $27,403,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MT, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: New York.

Mutual Service Casualty Insurance Company
BUSINESS ADDRESS: P.O. Box 64035, St. Paul, MN 55164–0035. PHONE: (612) 631–7000. UNDERWRITING LIMITATION [b]: $8,207,000. SURETY LICENSES [c]: AL, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

NAC Reinsurance Corporation
BUSINESS ADDRESS: One Greenwich Plaza, P.O. Box 2568, Greenwich, CT 06836–2568. PHONE: (203) 622–5200. UNDERWRITING LIMITATION [b]: $40,702,000. SURETY LICENSES [c]: AL, AK, AZ, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

National American Insurance Company
BUSINESS ADDRESS: 1008 Manvel Avenue, Chandler, OK 74834. PHONE: (405) 258–0804. UNDERWRITING LIMITATION [b]: $2,823,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

National-Ben Franklin Insurance Company of Illinois
BUSINESS ADDRESS: 200 South Wacker Drive, Chicago, IL 60606. PHONE: (312) 876–5000. UNDERWRITING LIMITATION [b]: $1,333,000. SURETY LICENSES [c]: DC, IL, IN, IA, KY, MD, MI, MN, NY, NC, ND, RI, SD, WI. INCORPORATED IN: Illinois.

National Fire Insurance Company of Hartford
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822–5000. UNDERWRITING LIMITATION [b]: $41,653,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

National Grange Mutual Insurance Company
BUSINESS ADDRESS: 55 West Street, Keene NH 03431. PHONE: (603) 352–4000. UNDERWRITING LIMITATION [b]: $11, 742,000. SURETY LICENSES [c]: CT, DE, DC, ME, MD, MA, MI, NH, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI. INCORPORATED IN: New Hampshire.

National Indemnity Company
BUSINESS ADDRESS: 3024 Harney Street, Omaha, NE 68131. PHONE: (402) 536–3000. UNDERWRITING LIMITATION [b] $369, 905.000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

National Reinsurance Corporation
BUSINESS ADDRESS: 777 Long Ridge Road, Stamford, CT 06904–2167. PHONE: (203) 329–7700. UNDERWRITING LIMITATION [b]: $35,324,000. SURETY LICENSES [c]: AK, AZ, AR, CA, CO, DE, DC, FL, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MT, NE, NV, NJ, NY, NC, ND, OH, OK, PA, PR, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

National Surety Corporation
BUSINESS ADDRESS: 200 West Monroe Street, Chicago, IL 60606. PHONE: (312) 580–6000. UNDERWRITING LIMITATION [b]: $12,090,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

National Union Fire Insurance Company of Pittsburgh, PA
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770–7000. UNDERWRITING LIMITATION [b]: $110,630,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Nationwide Mutual Insurance Company
BUSINESS ADDRESS: One Nationwide Plaza, Columbus, OH 43216. PHONE: (614) 249–7111. UNDERWRITING LIMITATION [b]: $198,396,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Navigators Insurance Company
BUSINESS ADDRESS: 123 William Street, New York, NY 10038. PHONE: (212) 406–2900. UNDERWRITING LIMITATION [b]: $5,380,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CO, DE, DC, GA, HI, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NE, NJ, NY, NC, ND, OH, OK, PA, RI, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: New York.

Netherlands Insurance Company (The)
BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352–3221. UNDERWRITING LIMITATION [b]: $1,515,000. SURETY LICENSES [c]: AZ, CA, CT, DC, GA, ID, IL, IN, IA, KY, ME, MD, MI, NV, NH, NJ, NY, NC, OH, OR, RI, SC, UT, VT, VA, WA, WI. INCORPORATED IN: New Hampshire.

New Hampshire Insurance Company
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770–7000. UNDERWRITING LIMITATION [b]: $24,576,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Nobel Insurance Company
BUSINESS ADDRESS: 8001 LBJ Freeway, Dallas, TX 75251–1301. PHONE: (800) 766–6235. UNDERWRITING

LIMITATION [b]: $2,895,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

North American Reinsurance Corporation [11]

North American Specialty Insurance Company
BUSINESS ADDRESS: 650 Elm Street, 6th Floor, Manchester, NH 03101–2524. PHONE: (603) 644–6600. UNDERWRITING LIMITATION [b]: $3,285,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Northbrook Property and Casualty Insurance Company
BUSINESS ADDRESS: 3075 Sanders Rd., STE H1B, Northbrook, IL 60062–7127. PHONE: (708) 551–2000. UNDERWRITING LIMITATION [b]: $19,293,000. SURETY LICENSES [c]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Northern Assurance Company of America (The)
BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725–6000. UNDERWRITING LIMITATION [b]: $20,713,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Northwestern Pacific Indemnity Company
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061–1615. PHONE: (908) 903–2000. UNDERWRITING LIMITATION [b]: $2,340,000. SURETY LICENSES [c]: CA, OR, TX, WA. INCORPORATED IN: Oregon.

Ohio Casualty Insurance Company (The)
BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867–3000. UNDERWRITING LIMITATION [b]: $66,000,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Ohio Farmers Insurance Company
BUSINESS ADDRESS: P.O. Box 5001, Westfield Center, OH 44251–5001. PHONE: (216) 887–0101. UNDERWRITING LIMITATION [b]: $37,612,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Oklahoma Surety Company
BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK 74101. PHONE: (918) 587–7221 x-200. UNDERWRITING LIMITATIONS [b]: $685,000. SURETY LICENSES [c]: AR, KS, OK, TX. INCORPORATED IN: Oklahoma.

Old Republic Insurance Company
BUSINESS ADDRESS: P.O. Box 789, Greensburg, PA 15601–0789. PHONE: (412) 834–5000. UNDERWRITING LIMITATION [b]: $33,452,000. SURETY LICENSE [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Old Republic Surety Company
BUSINESS ADDRESS: P.O. Box 1635, Milwaukee, WI 53201. PHONE: (414) 797–2640. UNDERWRITING LIMITATION [b]: $1,411,000. SURETY LICENSES [c]: AL, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, MD, MN, MS, MO, MT, NE, NV, NC, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Wisconsin.

Pacific Employers Insurance Company
BUSINESS ADDRESS: 1601 Chestnut Street, P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761–1000. UNDERWRITING LIMITATION [b]: $15,716,000. SURETY LICENSES [c]: AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

Pacific Indemnity Company
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061–1615. PHONE: (908) 903–2000. UNDERWRITING LIMITATION [b]: $45,438,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Pacific Insurance Company, Limited
BUSINESS ADDRESS: 150 Federal Street, Boston, MA 02110. PHONE: (617) 526–7600. UNDERWRITING LIMITATION [b]: $27,624,000. SURETY LICENSES [c]: HI. INCORPORATED IN: Hawaii.

Peerless Insurance Company
BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352–3221. UNDERWRITING LIMITATION [b]: $9,563,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Pekin Insurance Company
BUSINESS ADDRESS: 2505 Court Street, Pekin, IL 61558. PHONE: (309) 346–1161. UNDERWRITING LIMITATION [b]: $3,303,000. SURETY LICENSES [c]: IL, IN, IA, WI. INCORPORATED IN: Illinois.

Pennsylvania General Insurance Company
BUSINESS ADDRESS: 436 Walnut Street, P.O. Box 1109, Philadelphia, PA 19105–1109. PHONE: (215) 625–1070. UNDERWRITING LIMITATION [b]: $8,454,000. SURETY LICENSES [c]: AL, AZ, AR, CA, CO, CT, DE, DC, GA, IL, IN, KS, KY, LA, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NM, NY, NC, OH, OR, PA, RI, SC, TN, TX, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Pennsylvania Manufacturers' Association Insurance Company
BUSINESS ADDRESS: 380 Sentry Parkway, Blue Bell, PA 19422–2328. PHONE: (800) 222–2749. UNDERWRITING LIMITATION [b]: $20,407,000. SURETY LICENSES [c]: CA, CO, CT, DE, DC, FL, GA, ID, IL, IA, KY, LA, MD, MA, MI, MS, MO, MT, NE, NV, NJ, NM, NY, NC, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, WA, WV. INCORPORATED IN: Pennsylvania.

Pennsylvania Millers Mutual Insurance Company
BUSINESS ADDRESS: P.O. Box P, Wilkes-Barre, PA 18773–0016. PHONE: (717) 822–8111. UNDERWRITING LIMITATION [b]: $3,471,000. SURETY LICENSES [c]: AL, AR, CT, DC, FL, GA, ID, IN, KS, KY, LA, ME, MD, MA, MS, MO, NH, NJ, NY, NC, PA, RI, SC, TN, UT, VT, VA. INCORPORATED IN: Pennsylvania.

Pennsylvania National Mutual Casualty Insurance Company
BUSINESS ADDRESS: P.O. Box 2361, Harrisburg, PA 17105–2361. PHONE: (717) 234–4941. UNDERWRITING LIMITATION [b]: $17,839,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Personal Service Insurance Co. (The)
BUSINESS ADDRESS: P.O. Box 16068 Columbus, OH 43215. PHONE: (614) 221–5115 x–138. UNDERWRITING LIMITATION [b]: $2,754,000. SURETY LICENSES [c]: IN, OH. INCORPORATED IN: Ohio.

Phoenix Assurance Company of New York
BUSINESS ADDRESS: 4 World Trade Center, Suite 6274, New York, NY 10048. PHONE: (212) 775–1300. UNDERWRITING LIMITATION [b]: $4,578,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Phoenix Insurance Company (The)
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183–6014. PHONE: (203)

277–0111. UNDERWRITING LIMITATION [b]: $58,305,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Pioneer General Insurance Company
BUSINESS ADDRESS: 3900 East Mexico Avenue, Suite 330, Denver, CO 80210. PHONE: (303) 758–8122. UNDERWRITING LIMITATION [b]: $121,000. SURETY LICENSES [c]: CO. INCORPORATED IN: Colorado.

Planet Indemnity Company
BUSINESS ADDRESS: 410 Seventeenth Street, Suite 1675, Denver, CO 80202. PHONE: (303) 534–5300. UNDERWRITING LIMITATION [b]: $626,000. SURETY LICENSES [c]: CO. INCORPORATED IN: Colorado.

Preferred National Insurance Company
BUSINESS ADDRESS: P.O. Box 407003, FT Lauderdale, FL 33340–7003. PHONE: (305) 752–1222. UNDERWRITING LIMITATION [b]: $1,052,000. SURETY LICENSES [c]: FL, SC. INCORPORATED IN: Florida.

Progressive Casualty Insurance Company
BUSINESS ADDRESS: 6300 Wilson Mills Road, Mayfield Village, OH 44143–2182. PHONE: (216) 461–5000. UNDERWRITING LIMITATION [b]: $12,113,000. SURETY LICENSES [c]: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, GU, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Protection Mutual Insurance Company
BUSINESS ADDRESS: 300 S. Northwest Highway, Park Ridge, IL 60068. PHONE: (708) 825–4474. UNDERWRITING LIMITATION [b]: $33,058.000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Protective Insurance Company
BUSINESS ADDRESS: 1099 North Meridian Street, Indianapolis, IN 46204. PHONE: (317) 636–9800. UNDERWRITING LIMITATION [b]: $16,850,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Prudential Reinsurance Company
BUSINESS ADDRESS: 3 Gateway Center, Newark, NJ 07102–4082. PHONE: (201) 802–8000. UNDERWRITING LIMITATION [b]: $44,245,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: Delaware.

Ranger Insurance Company
BUSINESS ADDRESS: P.O. Box 2807, Houston, TX 77252. PHONE: (713) 954–8100. UNDERWRITING LIMITATION [b]: $5,960,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Reinsurance Corporation of New York (The)
BUSINESS ADDRESS: 80 Maiden Lane, New York, NY 10038. PHONE: (212) 363–4440. UNDERWRITING LIMITATION [b]: $7,308,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MI, MN, MS, MO, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Reliance Insurance Company
BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864–4000. UNDERWRITING LIMITATION [b]: $30,398,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Reliance Insurance Company of Illinois [12]
BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864–4000. UNDERWRITING LIMITATION [b]: $2,103,000. SURETY LICENSES [c]: IL. INCORPORATED IN: Illinois.

Reliance National Indemnity Company
BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864–4000. UNDERWRITING LIMITATION [b]: $2,253,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Reliance National Insurance Company of New York
BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864–4000. UNDERWRITING LIMITATION [b]: $2,209,000. SURETY LICENSES [c]: NY. INCORPORATED IN: New York.

Reliance Surety Company
BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864–4000. UNDERWRITING LIMITATION [b]: $2,044,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CO, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Republic Western Insurance Company
BUSINESS ADDRESS: 2721 North Central Avenue, Phoenix, AZ 85004–1163. PHONE: (602) 263–6755. UNDERWRITING LIMITATION [b]: $9,395,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

Royal Indemnity Company
BUSINESS ADDRESS: 9300 Arrowpoint Boulevard, P.O. Box 1000, Charlotte, NC 28201–1000. PHONE: (704) 522–2000. UNDERWRITING LIMITATION [b]: $13,700,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

SAFECO Insurance Company of America
BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545–5000. UNDERWRITING LIMITATION [b]: $75,109,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

SAFECO Insurance Company of Illinois
BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (708) 490–2900. UNDERWRITING LIMITATION [b]: $9,596,000. SURETY LICENSES [c]: AZ, CO, IL, KS, KY, MD, MI, MN, MS, NE, NM, OH, OR, PA, TN, TX, UT, WI, WY. INCORPORATED IN: Illinois.

SAFECO National Insurance Company
BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545–5000. UNDERWRITING LIMITATION [b]: $4,966,000. SURETY LICENSES [c]: CO, KY, MD, MO, NY, UT, WI, WY. INCORPORATED IN: Missouri.

Scor Reinsurance Company
BUSINESS ADDRESS: 110 William Street, Suite 1800, New York, NY 10038. PHONE: (212) 978–8200. UNDERWRITING LIMITATION [b]: $24,342,000. SURETY LICENSES [c]: AL, AZ, CA, LA, MI, MS, NE, NM, NY, NC, OH, OK, OR, PA, TX. INCORPORATED IN: New York.

Sea Insurance Company of America (The)
BUSINESS ADDRESS: 25 Independence Blvd., Warren, NJ 07059. PHONE: (212) 753–8130. UNDERWRITING LIMITATION [b]: $10,769,000. SURETY LICENSES [c]: AK, AZ, AR, CA, CT, DE, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Seaboard Surety Company

BUSINESS ADDRESS: Burnt Mills Road and Route 206, Bedminster, NJ 07921. PHONE: (908) 658–3500. UNDERWRITING LIMITATION [b]: $12,681,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Security Insurance Company of Hartford
BUSINESS ADDRESS: P.O. Box 420 Hartford, CT 06141. PHONE: (203) 674–6600. UNDERWRITING LIMITATION [b]: $13,092,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Security National Insurance Company
BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265–5028. PHONE: (214) 360–8000. UNDERWRITING LIMITATION [b]: $1,329,000. SURETY LICENSES [c]: AL, AR, CA, CO, GA, ID, IL, IN, KS, KY, MS, MO, MT, NE, NM, OH, OK, OR, TX, WI, WY. INCORPORATED IN: Texas.

Select Insurance Company
BUSINESS ADDRESS: P.O. Box 1771, Dallas, TX 75221–1771. PHONE: (214) 650–2800. UNDERWRITING LIMITATION [b]: $2,367,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MI, MS, MO, MT, NE, NV, NM, NC, OH, OR, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

Selective Insurance Company of America
BUSINESS ADDRESS: Wantage Avenue, Branchville, NJ 07890. PHONE: (201) 948–3000. UNDERWRITING LIMITATION [b]: $14,808,000. SURETY LICENSES [c]: AL, DE, DC, FL, GA, MD, MS, NJ, NY, NC, PA, SC, TX, VA. INCORPORATED IN: New Jersey.

Sentinel Insurance Company, LTD.
BUSINESS ADDRESS: 1001 Bishop Street, P.O. Box 1140, Honolulu, HI 96807. PHONE: (808) 546–5700. UNDERWRITING LIMITATION [b]: $1,621,000. SURETY LICENSES [c]: HI. INCORPORATED IN: Hawaii.

Sentry Insurance A Mutual Company
BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. PHONE: (715) 346–6000. UNDERWRITING LIMITATION [b]: $102,275,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Signet Star Reinsurance Company
BUSINESS ADDRESS: 100 Campus Drive, P.O. Box 853, Florham Park, NJ 07932–0853. PHONE: (201) 301–8000. UNDERWRITING LIMITATION [b]: $22,507,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Delaware.

Skandia America Reinsurance Corporation
BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 978–4700. UNDERWRITING LIMITATION [b]: $22,121,000. SURETY LICENSES [c]: AL, AZ, CA, DE, DC, GA, ID, IL, IN, IA, MI, MS, MT, NE, NY, OH, OK, OR, PA, TN, TX, UT, VA, WA, WI. INCORPORATED IN: Delaware.

Sorema North America Reinsurance Company
BUSINESS ADDRESS: 199 Water Street, New York, NY 10038–3526. PHONE: (212) 480–1900. UNDERWRITING LIMITATION [b]: $15,238,000. SURETY LICENSES [c]: AK, AZ, CA, DE, DC, HI, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, OH, OR, RI, SC, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: New York.

St. Paul Fire and Marine Insurance Company
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 221–7911. UNDERWRITING LIMITATION [b]: $94,328,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GV, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

St. Paul Guardian Insurance Company
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 221–7911. UNDERWRITING LIMITATION [b]: $2,847,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NM, NY, NC, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Minnesota.

St. Paul Mercury Insurance Company
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 221–7911. UNDERWRITING LIMITATION [b]: $5,433,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Standard Fire Insurance Company (The)
BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. PHONE: (203) 952–3043. UNDERWRITING LIMITATION [b]: $64,831,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Star Insurance Company
BUSINESS ADDRESS: 26600 Telegraph Road, Southfield, MI 48034. PHONE: (810) 358–4020. UNDERWRITING LIMITATION [b]: $2,772,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

State Automobile Mutual Insurance Company
BUSINESS ADDRESS: 518 East Broad Street, Columbus, OH 43215–3976. PHONE: (614) 464–5000. UNDERWRITING LIMITATION [b]: $35,758,000. SURETY LICENSES [c]: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NC, ND, OH, PA, SC, SD, TN, VA, WV, WI, WY. INCORPORATED IN: Ohio.

State Farm Fire and Casualty Company
BUSINESS ADDRESS: 112 East Washington Street, Bloomington, IL 61701. PHONE: (309) 766–2311. UNDERWRITING LIMITATION [b]: $93,381,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois

State Surety Company [3]

Statewide Insurance Company
BUSINESS ADDRESS: 325 North Genesee Street, Waukegan, IL 60085. PHONE: (708) 662–0073. UNDERWRITING LIMITATION [b]: $1,004,000. SURETY LICENSES [c]: AZ, AR, IL, IN, IA, MN, MO, NE, NV, OH, TN, WI. INCORPORATED IN: Illinois

Sun Insurance Office of America Inc.
BUSINESS ADDRESS: 25 Independence Blvd., Warren, NJ 07059. PHONE: (212) 753–8130. UNDERWRITING LIMITATION [b]: $10,000,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Surety Company of the Pacific
BUSINESS ADDRESS: P.O. Box 10289, Van Nuys, CA 91410–0289. PHONE: (818) 609–9232. UNDERWRITING LIMITATION [b]: $635,000. SURETY LICENSES [c]: CA. INCORPORATED IN: California.

Swiss Reinsurance America Corporation [11]
BUSINESS ADDRESS: 237 Park Avenue, New York, NY 10017. PHONE: (212) 907–8000. UNDERWRITING LIMITATION [b]: $53,486,000. SURETY LICENSES [c]: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: New York.

TEXAS PACIFIC INDEMNITY COMPANY
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061–1615. PHONE: (908) 903–2000.

UNDERWRITING LIMITATION [b]: $702,000. SURETY LICENSES [c]: AR, TX. INCORPORATED IN: Texas.

TIG Insurance Company
BUSINESS ADDRESS: P.O. Box 152870, Irving, TX 75015–8810. PHONE: (214) 831–5000. UNDERWRITING LIMITATION [b]: $72,990,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California

TIG Insurance Company of Michigan
BUSINESS ADDRESS: 70 West Michigan Avenue, Battle Creek, MI 49017. PHONE: (214) 831–5000. UNDERWRITING LIMITATION [b]: $1,995,000. SURETY LICENSES [c]: AR, ID, IL, IN, IA, KS, KY, MI, MN, NY, SD, TX, UT, WY. INCORPORATED IN: Michigan.

TIG Premier Insurance Company
BUSINESS ADDRESS: 333 South Anita Drive, Orange, CA 92668. PHONE: (214) 831–5000. UNDERWRITING LIMITATION [b]: $8,203,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

Titan Indemnity Company
BUSINESS ADDRESS: P.O. Box 65100, San antonio, TX 78265–5100. PHONE: (210) 824–4546. UNDERWRITING LIMITATION [b]: $4,132,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: Texas

TRANSATLANTIC REINSURANCE COMPANY
BUSINESS ADDRESS: 80 Pine Street, New York, NY 1005. PHONE: (212) 770–2000. UNDERWRITING LIMITATION [b]: $34,292,000. SURETY LICENSES [c]: IN, IA, KY, NV, NM, NY, OH, OK, PA. INCORPORATED IN: New York.

Transcontinental Insurance Company
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822–5000. UNDERWRITING LIMITATION [b]: $16,583,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Transportation Insurance Company
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822–5000. UNDERWRITING LIMITATION [b]: $6,000,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: Illinois.

Travelers Indemnity Company (The)
BUSINESS ADDRESS: One Tower Square, Hartford, Ct 06183–6014. PHONE: (203) 277–0111. UNDERWRITING LIMITATION [b]: $133,319,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

TRAVELERS INDEMNITY COMPANY OF AMERICA (THE)
BUSINESS ADDRESS: 211 Perimeter Center Parkway, Atlanta, GA 30346. PHONE: (203) 277–0111. UNDERWRITING LIMITATION [b]: $8,580,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Georgia.

Travelers Indemnity Company of Connecticut (The)
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183–6014. PHONE: (203) 277–0111. UNDERWRITING LIMITATION [b]: $22,030,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Indemnity Company of Illinois (The)
BUSINESS ADDRESS: 184 Shuman Boulevard, Naperville, IL 60563. PHONE: (708) 983–2245. UNDERWRITING LIMITATION [b]: $6,321,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, PI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Tri-State Insurance Company of Minnesota
BUSINESS ADDRESS: One Roundwind Road, Luverne, MN 56156. PHONE: (507) 283–9561. UNDERWRITING LIMITATION [b]: $4,500,000. SURETY LICENSES [c]: CO, IL, IN, IA, MN, MO, NE, ND, OH, SD, WI. INCORPORATED IN: Minnesota.

Trinity Universal Insurance Company
BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265–5028. PHONE: (214) 360–8000. UNDERWRITING LIMITATION [b]: $35,529,000. SURETY LICENSES [c]: AL, AZ, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, LA, MI, MS, MO, MT, NE, NM, OH, OK, OR, TN, TX, WA, WI, WY. INCORPORATED IN: Texas.

Trinity Universal Insurance Company of Kansas, Inc.
BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265–5028 PHONE: (214) 360–8000. UNDERWRITING LIMITATION [b]: $884,000. SURETY LICENSES [c]: AL, AZ, CO, GA, ID, KS, KY, LA, MS, MO, MT, NE, OH, OK, OR, TX, WA, WI. INCORPORATED IN: Kansas.

Trumbull Insurance Company
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547–5000. UNDERWRITING LIMITATION [b]: $2,042,000. SURETY LICENSES [c]: AL, AK, CT, DE, DC, IN, MA, MN, MO, NE, NJ, OK, PA, RI, WY. INCORPORATED IN: Connecticut.

Twin City Fire Insurance Company
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547–5000. UNDERWRITING LIMITATION [b]: $9,431,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

U.S. Capital Insurance Company [13]
BUSINESS ADDRESS: 4 West Red Oak Lane, White Plains, NY 10604–3602. PHONE: (914) 694–4757. UNDERWRITING LIMITATION [b]: $1,830,000. SURETY LICENSES [c]: AZ, CA, DE, DC, FL, GA, IN, IA, LA, MD, MI, MT, NE, NV, NM, NY, ND, OH, PA, SD, TN, TX, UT, VA, WI. INCORPORATED IN: New York.

Ulico Casualty Company
BUSINESS ADDRESS: 111 Massachusetts Avenue, NW, Washington, DC 20001. PHONE: (202) 682–0900. UNDERWRITING LIMITATION [b]: $5,375,000. SURETY LICENSES [c]: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Underwriters Indeminity Company
BUSINESS ADDRESS: 8 Greenway Plaza, Suite 400, Houston, TX 77046. PHONE: (713) 961–1300. UNDERWRITING LIMITATION [b]: $375,000. SURETY LICENSES [c]: GA, KY, MS, NM, SC, TX, WY. INCORPORATED IN: Texas.

Underwriters Reinsurance Company
BUSINESS ADDRESS: P.O. Box 4030, Woodland Hills, CA 91365. PHONE: (818) 225–1000. UNDERWRITING LIMITATION [b]: $27,653,000. SURETY LICENSES [c]: AZ, CA, DE, DC, ID, IL, IN, IA, KY, MI, MS, NE, NV, NM, NY, OH, PA, RI, TX, UT, WI, WY. INCORPORATED IN: New Hampshire.

Unigard Security Insurance Company
BUSINESS ADDRESS: 1215 Fourth Avenue, Suite 1800, Seattle, WA 98161–0196. PHONE: (206) 292–7861. UNDERWRITING LIMITATION [b]: $8,472,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, IN, IA, KS, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Washington.

Union Insurance Company

BUSINESS ADDRESS: P.O. Box 80439, Lincoln, NE 68501–0439, PHONE: (402) 423–7688. UNDERWRITING LIMITATION [b]: $2,544,000. SURETY LICENSES [c]: AR, CO, DC, ID, IA, KS, MD, MN, MS, MO, MT, NE , ND, OK, SD, TX, UT, VA, WA, WY. INCORPORATED IN: Nebraska.

United Capitol Insurance Company [14]
BUSINESS ADDRESS: 400 Perimeter Center Terrace, Suite 345, Atlanta, GA 30346 PHONE: (404) 677–0330. UNDERWRITING LIMITATION [b]: $6,175,000. SURETY LICENSES [c]: AZ, WI. INCORPORATED IN: Wisconsin.

United Coastal Insurance Company [15]
BUSINESS ADDRESS: 233 Main Street, P.O. Box 2350, New Britian, CT 06050–2350. PHONE: (203) 223–5000. UNDERWRITING LIMITATION [b]: $3,834,000. SURETY LICENSES [c]: AZ. INCORPORATED IN: Arizona.

United Fire & Casualty Company
BUSINESS ADDRESS: P.O. Box 73909, Cedar Rapids, IA 52407. PHONE: (319) 399–5700. UNDERWRITING LIMITATION [b]: $12,532,000. SURETY LICENSES [c]: AK, AZ, AR, CA, CO, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, SC, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

United National Insurance Company
BUSINESS ADDRESS: Three Bala Plaza East, Suite 300, Bala Cynwyd, PA 19004. PHONE: (610) 664–1500. UNDERWRITING LIMITATION [b]: $9,762,000. SURETY LICENSES [c]: PA. INCORPORATED IN: Pennsylvania.

United Pacific Insurance Company
BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864–4000. UNDERWRITING LIMITATION [b]: $5,812,000. SURETY LICENSES [c]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GV, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

United Pacific Insurance Company of New York
BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864–4000. UNDERWRITING LIMITATION [b]: $2,455,000. SURETY LICENSES [c]: NY. INCORPORATED IN: New York.

United States Fidelity and Guaranty Company
BUSINESS ADDRESS: TW3001, P.O. Box 1138, Baltimore, MD 21203–1138. PHONE: (410) 547–3000. UNDERWRITING LIMITATION [b]: $99,537,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

United States Fire Insurance Company
BUSINESS ADDRESS: 6 Sylvan Way, Parsippany, NJ 07054. PHONE: (201) 285–9300. UNDERWRITING LIMITATION [b]: $40,467,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GV, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

United Surety and Indemnity Company
BUSINESS ADDRESS: P.O. Box 2111, San Juan, PR 00922–2111. PHONE: (809) 273–1818. UNDERWRITING LIMITATION [b]: $365,000. SURETY LICENSES [c]: PR. INCORPORATED IN: Puerto Rico.

Universal Bonding Insurance Company
BUSINESS ADDRESS: 518 Stuyvesant Avenue, Lyndhurst, NJ 07071. PHONE: (201) 438–7223. UNDERWRITING LIMITATION [b]: $842,000. SURETY LICENSES [c]: NJ, NY. INCORPORATED IN: New Jersey.

Universal Insurance Company
BUSINESS ADDRESS: G.P.O. Box 71338, San Juan, PR 00936. PHONE: (809) 793–7202. UNDERWRITING LIMITATION [b]: $5,652,000. SURETY LICENSES [c]: PR. INCORPORATED IN: Puerto Rico.

Universal Surety Company
BUSINESS ADDRESS: P.O. Box 80468, Lincoln, NE 00936. PHONE: (402) 435–4302. UNDERWRITING LIMITATION [b]: $2,252,000. SURETY LICENSES [c]: AZ, CO, ID, IL, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OK, OR, SD, UT, WI, WY. INCORPORATED IN: Nebraska.

Universal Surety of America
BUSINESS ADDRESS: P.O. Box 1068, Houston, TX 77251–1068. PHONE: (713) 722–4600. UNDERWRITING LIMITATION [b]: $764,000. SURETY LICENSES [c]: AL, AR, CO, FL, GA, IA, KS, LA, MS, MO, NM, NC, OK, SC, TN, TX. INCORPORATED IN: Texas.

UNIVERSAL UNDERWRITERS INSURANCE COMPANY
BUSINESS ADDRESS: 6363 College Blvd., Overland Park, KS 66211. PHONE: (913) 339–1000. UNDERWRITING LIMITATION [b]: $34,607,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Utica Mutual Insurance Company
BUSINESS ADDRESS: P.O. Box 530, Utica, NY 13503–0530. PHONE: (315) 734–2000. UNDERWRITING LIMITATION [b]: $21,871,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Valley Forge Insurance Company
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822–5000. UNDERWRITING LIMITATION [b]: $12,715,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Van Tol Surety Company, Incorporated
BUSINESS ADDRESS: 424 Fifth Street, Brookings, SD 57006. PHONE: (605) 692–6294. UNDERWRITING LIMITATION [b]: $207,000. SURETY LICENSES [c]: SD. INCORPORATED IN: South Dakota.

Vesta Fire Insurance Corporation
BUSINESS ADDRESS: P.O. Box 43360, Birmingham, AL 35243–3360. PHONE: (205) 970–7000. UNDERWRITING LIMITATION [b]: $21,251,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CO, DC, IL, IN, IA, KS, KY, LA, MA, MN, MO, MT, NE, NV, NJ, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Alabama.

Vigilant Insurance Company
BUSINESS ADDRESS: Mountain View Rd., P.O. Box 1615, Warren, NJ 07061–1615. PHONE: (908) 903–2000. UNDERWRITING LIMITATION [b]: $37,625,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Washington International Insurance Company
BUSINESS ADDRESS: 1930 Thoreau Drive, Suite 101, Schaumburg, IL 60173. PHONE: (708) 490–1850. UNDERWRITING LIMITATION [b]: $1,555,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Arizona.

West American Insurance Company
BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867–3000. UNDERWRITING LIMITATION [b]: $48,045,000. SURETY LICENSES [c]: AL, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Westchester Fire Insurance Company
BUSINESS ADDRESS: Six Concourse Parkway, Suite 2700, Atlanta, GA 30328–5346. PHONE: (404) 393–9955. UNDERWRITING LIMITATION [b]: $12,803,000. SURETY LICENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Western Surety Company
BUSINESS ADDRESS: P.O. Box 5077, Sioux Falls, SD 57117–5077. PHONE:

(605) 336–0850. UNDERWRITING LIMITATION [b]: $3,711,000. SURETY LIcENSES [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: South Dakota.

Westfield Insurance Company
BUSINESS ADDRESS: P.O. Box 5001, Westfield Center, OH 44251–5001. PHONE: (216) 887–0101. UNDERWRITING LIMITATION [b]: $19,488,000. SURETY LICENSES [c]: AL, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Westfield National Insurance Company
BUSINESS ADDRESS: P.O. Box 5001, Westfield Center, OH 44251–5001. PHONE: (216) 887–0101. UNDERWRITING LIMITATION [b]: $5,374,000. SURETY LICENSES [c]: CA, IA, OH. INCORPORATED IN: Ohio.

Winterthur Reinsurance Corporation of America
BUSINESS ADDRESS: Two World Financial Ctr, 225 Liberty Street, 42 Fl, New York, NY 10281. PHONE: (212) 416–5700. UNDERWRITING LIMITATION [b]: $20,492,000. SURETY LICENSES [c]: AL, AZ, CA, DE, DC, IL, IN, IA, KY, MD, MI, MN, MS, MT, NE, NJ, NY, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, WA, WV, WI. INCORPORATED IN: New York.

Zenith Insurance Company
BUSINESS ADDRESS: 21255 Califa Street, Woodland Hills, CA 91367. PHONE: (818) 713–1000. UNDERWRITING LIMITATION [b]: $21,323,000. SURETY LICENSES [c]: AZ, AR, CA, CO, FL, HI, ID, IL, LA, NM, OK, OR, TX, UT. INCORPORATED IN: California.

Companies Holding Certificates of Authority as Acceptable Reinsuring Companies Under Section 223.3(b) of Treasury Circular No. 297, Revised September 1, 1978 [See Note (e)]

FOLKSAMERICA REINSURANCE COMPANY
BUSINESS ADDRESS: One Liberty Plaza, 19th Floor, New York, NY 10006. PHONE: (212) 312–2500. UNDERWRITING LIMITATION [b]: $11,429,000.

Frankona America Reinsurance Company
BUSINESS ADDRESS: P.O. Box 419069, Kansas City, MO 64108–2554. PHONE: (816) 471–2200. UNDERWRITING LIMITATION [b]: $11,214,000.

Generali—U.S. Branch
BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 602–7600. UNDERWRITING LIMITATION [b]: $7,282,000.

GREAT LAKES AMERICAN REINSURANCE COMPANY
BUSINESS ADDRESS: 88 Pine Street, Wall Street Plaza, New York, NY 10005–1894. PHONE: (212) 809–1061. UNDERWRITING LIMITATION [b]: $10,082,000.

Munich Reinsurance Company, U.S. Branch
BUSINESS ADDRESS: 560 Lexington Ave., New York, NY 10022. PHONE: (212) 310–1800. UNDERWRITING LIMITATION [b]: $43,725,000.

Swiss Reinsurance Company, U.S. Branch [11]

Tokio Marine and Fire Insurance Company, Limited (The), U.S. Branch
BUSINESS ADDRESS: 101 Park Avenue, New York, NY 10178. PHONE: (212) 297–6600. UNDERWRITING LIMITATION [b]: $17,850,000.

Western Atlantic Reinsurance Corporation
BUSINESS ADDRESS: 380 Madison Avenue, New York, NY 10017. PHONE: (212) 973–5800. UNDERWRITING LIMITATION [b]: $9,486,000.

Zurich Insurance Company, U.S. Branch
BUSINESS ADDRESS: 1400 American Lane, Schaumburg, IL 60196. PHONE: (708) 605–6000. UNDERWRITING LIMITATION [b]: $67,407,000.

Footnotes

[1] American Fidelity Company changed its state of incorporation from Vermont to Colorado and changed its name to American International Pacific Insurance Company, effective February 9, 1995.

[2] CUMBERLAND CASUALTY & SURETY COMPANY changed its state of incorporation from Texas to Florida, effective March 27, 1995.

[3] State Surety Company changed its name to Developers Surety and Indemnity Company, effective April 10, 1995.

[4] Fidelity and Guaranty Insurance Underwriters, Inc. changed its state of incorporation from Ohio to Wisconsin, effective October 1, 1994.

[5] FRONTIER INSURANCE COMPANY is required by state law to conduct business in the states of Arkansas, Florida, Iowa, Louisiana, Nevada, North Dakota, Texas and Utah as Frontier Insurance Company, DBA Frontier Insurance Company of New York. In Missouri, FRONTIER INSURANCE COMPANY is required by state law to conduct business as New York Frontier Insurance Company.

[6] This Company has a name very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular.

[7] Insurance Company of Evanston changed its name to MARKEL INSURANCE COMPANY, effective January 1, 1995.

[8] Massachusetts Bay Insurance Company changed its state of incorporation from Massachusetts to New Hampshire, effective January 30, 1995.

[9] This Company has a name very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular.

[10] Millers Mutual Fire Insurance Company of Texas (The) changed its name to Millers Mutual Fire Insurance Company (The), effective November 4, 1994.

[11] North American Reinsurance Corporation changed its name to Swiss Reinsurance America Corporation, effective May 11, 1995. In addition, Swiss Reinsurance Company, U.S. Branch has been domesticated and merged into Swiss Reinsurance America Corporation (formerly known as North American Reinsurance Corporation), effective June 1, 1995.

[12] Reliance Insurance Company of Illinois is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.

[13] U.S. Capital Insurance Company is required by state law to conduct business in the state of California as MultiPlus Insurance Co.

[14] United Capitol Insurance Company is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions, related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.

[15] United Coastal Insurance Company is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at end of this publication.

Notes

(a) All Certificates of Authority expire June 30, and are renewable July 1, annually. Companies holding Certificates of Authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) The Underwriting Limitations published herein are on a *per bond basis.* Treasury requirements do not limit the penal sum (face amount) of bonds which surety companies may provide. However, *when the penal sum exceeds a company's Underwriting Limitation, the excess must be protected* by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 CFR Section 223.10, Section 223.11). Treasury refers to a *bond of this type as an Excess Risk.* When Excess Risks on *bonds in favor of the United States are protected by reinsurance*, such reinsurance is to be effected by use of a *Federal reinsurance form* to be filed with the bond or within 45 days thereafter. In protecting such excess risks, the underwriting limitation in force on the day

in which the bond was provided will govern absolutely. For further assistance, contact the Surety Bond Branch at (FTS/202) 874–6850.

(c) A surety company *must be licensed in the State or other area in which it provides a bond,* but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed [28 Op. Atty. Gen. 127, Dec. 24, 1909; 31 CFR Section 223.5 (b)]. The term ''other area'' includes the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.

License information in this Circular is provided to the Treasury Department by the companies themselves. *For updated license information, you may contact the company directly or the applicable State Insurance Department.* Refer to the list of state insurance departments at the end of this publication. For further assistance, contact the Surety Bond Branch at (FTS/202) 874–6850.

(d) Federal Process Agents: Treasury approved surety companies are required to appoint Federal process agents in accord with 31 U.S.C. 9306 and 31 CFR 224 in the following districts: Where the *principal resides*; where the *obligation is to be performed*; and in the *District of Columbia* where the bond is returnable or filed. No process agent is required in the State or other area where the company is incorporated (31 CFR Section 224.2). The name and address of a particular surety's process agent in a particular Federal Judicial District may be obtained from the Clerk of the U.S. District Court in that district. (The appointment documents are on file with the clerks.) (NOTE: A surety company's underwriting agent who furnishes its bonds may or may not be its authorized process agent.)

Service of Process: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the absence of such agent from the district. Only in the event an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the Clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable *only* as reinsuring companies on Federal bonds.

(f) Some companies may be approved *surplus lines carriers* in various states. Such approval may indicate that the company is *authorized to write surety in a particular state, even though the company is not licensed in the state.* Questions related to this may be directed to the appropriate State Insurance Department. Refer to the list of state insurance departments at the end of this publication.

State insurance departments	Telephone No.
Alabama, Montgomery 36130–3401	(205) 269–3550
Alaska, Juneau 99811–0805	(907) 465–2515
Arizona, Phoenix 85012	(602) 912–8420
Arkansas, Little Rock 72204	(501) 371–1325
California, San Francisco 94102	(916) 445–5544
Colorado, Denver 80202	(303) 894–7499
Connecticut, Hartford 06142–0816	(203) 297–3802
Delaware, Dover 19901	(302) 739–4251
D.C., Washington 20013–7200	(202) 727–8000
Florida, Tallahasse 32399–0300	(904) 922–3100
Georgia, Atlanta 30334	(404) 656–2056
Hawaii, Honolulu 96811	(808) 586–2799
Idaho, Boise 83720	(208) 334–2250
Illinois, Springfield 62767	(217) 782–4515
Indiana, Indianapolis 46204–2787	(317) 232–2385
Iowa, Des Moines 50319	(515) 281–5705
Kansas, Topeka 66612	(913) 296–7801
Kentucky, Frankford 40602	(502) 564–3630
Louisiana, Baton Rouge 70804	(504) 342–5900
Maine, Augusta 04333	(207) 582–8707
Maryland, Baltimore 21202	(410) 333–6300
Massachusetts, Boston 02114	(617) 727–7189
Michigan, Lansing 48909	(517) 373–9273
Minnesota, St. Paul 55101	(612) 296–6848
Mississippi, Jackson 39205	(601) 359–3569
Missouri, Jefferson City 65102–0690	(314) 751–4126
Montana, Helena 59604–4009	(406) 444–2040
Nebraska, Lincoln 68508	(402) 471–2201
Nevada, Carson City 89710	(702) 687–4270
New Hampshire, Concord 03301	(603) 271–2261
New Jersey, Trenton 08625	(609) 292–5360
New Mexico, Sante Fe 87504–1269	(505) 827–4500
New York, New York 10013	(518) 474–6630
North Carolina, Raleigh 27611	(919) 733–7349
North Dakota, Bismarck 58505	(701) 224–2440
Ohio, Columbus 43266–0566	(614) 644–2658
Oklahoma, Oklahoma City 73152–3408	(405) 521–2828
Oregon, Salem 97310	(503) 378–4271
Pennsylvania, Harrisburg 17120	(717) 787–5173
Puerto Rico, Santurce 00910–8330	(809) 722–8686
Rhode Island, Providence 02903	(401) 277–2223
South Carolina, Columbia 29202–3105	(803) 737–6117
South Dakota, Pierre 57501	(605) 773–3563
Tennessee, Nashville 37243–0565	(615) 741–2241
Texas, Austin 78714–9104	(512) 463–6464
Utah, Salt Lake City 84114– 01	(801) 538–3800
Vermont, Montpelier 05620–3101	(802) 828–3301
Virginia, Richmond 23209	(804) 371–9741
Virgin Islands, St. Thomas 00802	(809) 774–2991
Washington, Olympia 98504	(206) 753–7301
West Virginia, Charleston 25305	(304) 558–3394
Wisconsin, Madison 53707–7873	(608) 266–0102
Wyoming, Cheyenne 82002	(307) 777–7401

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