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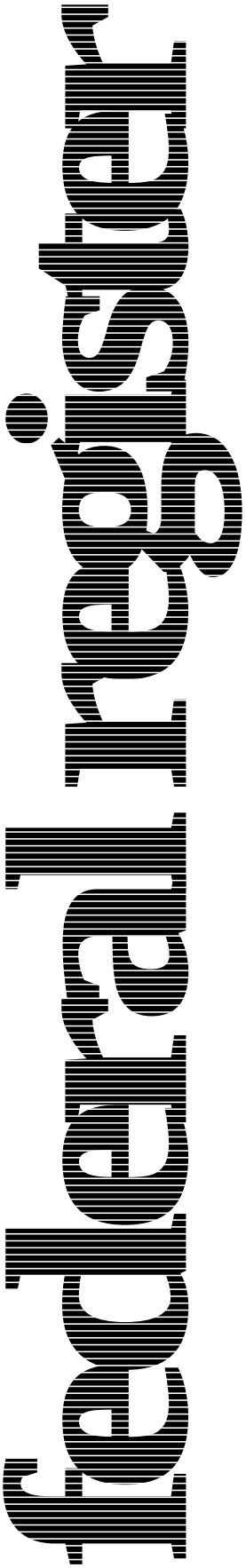


Friday
July 28, 1995

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**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

**WHEN:** September 12 at 9:00 am
**WHERE:** Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)
**RESERVATIONS:** 202–523–4538

### ATLANTA, GA

**WHEN:** September 20 at 9:00 am
**WHERE:** Centers for Disease Control
1600 Clifton Rd., NE.
Auditorium A
Atlanta, GA
**RESERVATIONS:** 404–639–3528
(Atlanta area)
1–800–688–9889
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## OFFICE OF GOVERNMENT ETHICS

### 5 CFR Part 2610

**RIN 3209–AA19**

### Implementation of the Equal Access to Justice Act

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Final rule.

**SUMMARY:** The Office of Government Ethics is adopting as final, with one correction, a previously published interim regulation establishing procedures, in accordance with the Equal Access to Justice Act and guidance from the Administrative Conference of the United States, for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called ''adversary adjudications'') before the Office of Government Ethics. This regulation describes the parties eligible for awards and the proceedings which are covered. The rule also explains how to apply for awards, and the procedures and standards which the Office of Government Ethics will use to make awards.

**EFFECTIVE DATE:** September 26, 1995.

**FOR FURTHER INFORMATION CONTACT:** Janet K. Roell, Office of Government Ethics, telephone 202–523–5757, FAX 202–523–6325.

**SUPPLEMENTARY INFORMATION:** In this rulemaking document, the Office of Government Ethics is adopting as a final regulation, with correction of one typographical error, its previously published interim regulation under the Equal Access to Justice Act (EAJA), 5 U.S.C. 504. See 57 FR 33267–33272 (July 28, 1992), as corrected at 59 FR 34755 (July 7, 1994). The EAJA requires every agency to establish, by regulation, procedures for the submission and consideration of applications by eligible prevailing private parties for an award of fees and expenses incurred in connection with adversary adjudications before the agency. The interim OGE regulation (5 CFR part 2610), generally followed, with certain modifications, the final revised model rule issued on May 6, 1986 (51 FR 16659–16669) by the Administrative Conference of the United States pursuant to its consultative role under EAJA.

A 60-day comment period was provided in the interim regulation, and OGE received two comments. One comment addressed the appealability of the Board of Contract Appeals (BCA) decisions by the Director of the Office. The other comment addressed the fees that attorneys may be awarded when representing someone under the EAJA. The first commentator questioned whether a decision of a BCA should be reviewable by the OGE Director. He stated that all decisions of BCAs are autonomous and should remain so. After reviewing this matter, OGE does not believe any change to the EAJA regulation is needed. The Office of Government Ethics, which is a small agency, does not have a BCA and would have to request that agency's BCA hearings be held by an agency with a BCA. In this regard, OGE would coordinate with the rules and procedures established by that BCA, including the reviewability of its decisions. This Office notes that, to date, it has not had any EAJA claims filed in contract or any other matters before it.

The second comment letter addressed the issue of increasing fees for attorney representation. That commentator, citing *Jones* v. *Lujan*, 887 F.2d 1096, 1101 (D.C. Cir. 1989), suggested that OGE increase the $75 per hour maximum attorney fee rate currently allowed in its EAJA regulation to reflect the increases in the cost of living. The court in the *Jones* case awarded the prevailing private party an increased attorney litigation fee rate using a cost of living increase formula under 28 U.S.C. 2412(d)(2)(A)(ii). However, the court did not order the agency involved in that case, the Department of Interior, to change the similar fee structure as to administrative proceedings in its EAJA regulation and it did not. Upon review of the comment letter and case, and after checking several other agencies' EAJA rules (most of which likewise continue to provide for the $75 per hour maximum attorney fee rates), OGE has decided not to amend its regulation in this regard at this time. Section 2610.108 does provide a rulemaking mechanism for the maximum rate for attorney fees. Moreover, an EAJA reform bill (S. 554) was introduced earlier this year in the Senate which would, among other things, raise the maximum rate. This Office will continue to monitor its regulation, both as to the appropriateness of the fee rate and in general. Again, OGE notes that so far it has not received any EAJA applications.

**Executive Order 12866**

In promulgating this final regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has also been reviewed by the Office of Management and Budget under that Executive order.

**Regulatory Flexibility Act**

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because the number of proceedings covered by the rule will be extremely small and they will primarily affect current and former executive branch Federal employees.

**Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that require the approval of the Office of Management and Budget, since the collections of information called for under this rule are expected to involve nine or fewer persons each year. Section 2610.201(f) of this rule contains a statement informing the public of this matter.

**List of Subjects in 5 CFR Part 2610**

Administrative practice and procedure, Claims, Conflict of interests, Equal access to justice, Government employees.

Approved: June 16, 1995.

**Donald E. Campbell,**

*Deputy Director, Office of Government Ethics.*

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is adopting the interim regulation codified at 5 CFR part 2610, published at 57 FR 33267–33272 (July 28, 1992), as corrected at 59 FR 34755 (July 7, 1994), as a final regulation with the following amendment:

## PART 2610—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT

1. The authority citation for part 2610 continues to read as follows:

**Authority:** 5 U.S.C. 504(c)(1); 5 U.S.C. App. (Ethics in Government Act of 1978).

2. In § 2610.106, the word ''ineligible'' in the third sentence of paragraph (a) is revised to read ''eligible''.

[FR Doc. 95–18613 Filed 7–27–95; 8:45 am]

BILLING CODE 6345–01–U

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket No. 95–035–1]**

### Black Stem Rust; Addition of Rust-Resistant Varieties

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

**ACTION:** Direct final rule.

**SUMMARY:** We are amending the black stem rust quarantine and regulations to add three varieties to the list of rust-resistant *Berberis* species. This change will allow for the interstate movement of these newly developed varieties without unnecessary restrictions.

**DATES:** This rule will be effective on September 26, 1995, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before August 28, 1995.

**ADDRESSES:** Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Docket No. 95–035–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your submission refers to Docket No. 95–035–1. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, Suite 4C03, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–6365.

**SUPPLEMENTARY INFORMATION:**

#### Background

Black stem rust is one of the most destructive plant diseases of small grains that is known to exist in the United States. The disease is caused by a fungus that reduces the quality and yield of infected wheat, oat, barley, and rye crops by robbing host plants of food and water. In addition to infecting small grains, the fungus lives on a variety of alternate host plants that are species of the genera *Berberis, Mahoberberis,* and *Mohonia.* The fungus is spread from host to host by wind-borne spores.

The black stem rust quarantine and regulations, contained in 7 CFR 301.38 through 301.38–8 (referred to below as the regulations), quarantine the conterminous 48 States and the District of Columbia, and govern the interstate movement of certain plants of the genera *Berberis, Mahoberberis,* and *Mahonia,* known as barberry plants. The species of these plants are categorized as either rust-resistant or rust-susceptible. Rust-resistant plants do not pose a risk of spreading black stem rust or of contributing to the development of new races of the rust; rust-susceptible plants do pose such risks.

Section 301.38–2 of the regulations includes a listing of regulated articles and indicates species of the genera *Berberis, Mahoberberis,* and *Mahonia,* known to be rust-resistant. Although rust-resistant species are included as regulated articles, they may be moved into or through protected areas if accompanied by a certificate. In accordance with the procedures described below under ''Effective Date,'' this direct final rule will add *Berberis candidula* 'Amstelveen', *Berberis thunbergii* 'Lustre green', and *Berberis thunbergii* 'Monry', to the list of rust-resistant *Berberis* species in § 301.38–2(b).

The addition of the species listed above to the list of rust-resistant *Berberis* species is based on recent testing to determine rust-resistance conducted by the Agricultural Research Service of the United States Department of Agriculture (USDA) at its Cereal Rust Laboratory in St. Paul, MN. The testing is performed in the following manner: In a greenhouse, the suspect plant or test subject is placed under a screen with a control plant—a known rust-susceptible species of *Berberis, Mahoberberis,* or *Mahonia.* Infected wheat stems, a primary host of black stem rust, are placed on top of the screen. The plants are moistened and maintained in 100 percent humidity. This causes the spores to swell and fall on the plants lying under the screen. The plants are then observed for 7 days at 20–80 percent relative humidity. If the rust-susceptible plant shows signs of infection after 7 days and the test plants do not, the test results indicate that the test plants are rust-resistant. This test must be performed 12 times, and all 12 tests must yield the same result before USDA can make a determination as to whether the test plants are rust-resistant. The test may be conducted on 12 individual plants, or it may be performed multiple times on fewer plants (e.g., six plants tested twice or three plants tested four times). The tests must be performed on new growth, just as the leaves are unfolding. Therefore, the tests are usually conducted in the spring or fall, during the growing season. All 12 tests generally cannot be conducted on the same day because of the plants' different growth stages. Based on over 30 years of experience with this test, we believe that 12 is the reliable test sample size on which USDA can make its determination. We do not know of any plant that was subsequently discovered to be rust-susceptible after undergoing this procedure 12 times and being determined by USDA to be rust-resistant.

#### Dates

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

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

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a

proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

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

**Executive Order 12866 and Regulatory Flexibility Act**

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

This rule will allow the interstate movement of *Berberis candidula* 'Amstelveen,' *Berberis thunbergii* 'Lustre Green,' and *Berberis thunbergii* 'Monry,' into and through States or parts of States designated as protected areas in accordance with the requirements in the regulations. Based on the information provided to us, we have determined that this rule will affect three nurseries that might propagate the new species and numerous retail sales nurseries that might purchase or resell the varieties. This rule will enable those nurseries to move the species into and through protected areas and to propagate and sell the species in States or parts of States designated as protected areas. It is unlikely that the addition of these varieties to the list of rust-resistant *Berberis* species will have any effect on prices, investment, productivity, or our international competitive position. It is possible that this rule will positively affect innovation by allowing nurseries that develop new rust-resistant *Berberis* varieties the opportunity to market those varieties in protected areas. It is also possible that this rule will have some positive effect on nurseries that are small businesses by providing an opportunity for increased sales of rust-resistant *Berberis* species in protected areas. We cannot predict the exact number of nurseries that might be affected by this rule change, nor can we predict the level of demand for these new species or the impact on nurseries producing or selling them. It is likely, however, that any economic effects will not be significant as a result of additional plant sales.

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

**Executive Order 12372**

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

**Executive Order 12778**

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

**Paperwork Reduction Act**

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

**List of Subjects in 7 CFR Part 301**

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

## PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR part 301 is amended as follows:

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

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

2. In § 301.38–2, paragraph (b) is amended by adding, in alphabetical order, the following rust-resistant *Berberis* species:

**§ 301.38–2 Regulated articles.**

* * * * *

(b) * * *

*B. candidula* 'Amstelveen'

* * * * *

*B. thunbergii* 'Lustre Green'

* * * * *

*B. thunbergii* 'Monry'

* * * * *

Done in Washington, DC, this 18th day of July 1995.

**Terry L. Medley,**

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

[FR Doc. 95–18573 Filed 7–27–95; 8:45 am]

BILLING CODE 3410–34–P

## Food Safety and Inspection Service

## 9 CFR Parts 327 and 381

**[Docket No. 95–003F]**

**RIN 0583–AB88**

## Products From Foreign Countries; Eligibility for Import Into the United States

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending those paragraphs of the imported products sections of the Federal meat and poultry products inspection regulations that contain the phrase ''at least equal to'' by replacing that phrase with the words ''equivalent to.'' This action will amend language in the Federal meat and poultry products inspection regulations to correctly reflect the language used in the Uruguay Round Agreements Act, which was enacted to comply with the General Agreement on Tariffs and Trade, 1994 (GATT).

Subtitle B, section 431, paragraph (k) of Title IV of the Uruguay Round Agreements Act of 1994, Pub. L. No. 103–465, 108 Stat. 4809 (1994), amends section 17(d)(1) of the Poultry Products Inspection Act (PPIA) (21 U.S.C. § 466(d)(1)) to require that all imported poultry or poultry products intended for human consumption be subject to foreign inspection that achieves a level of sanitary protection equivalent to that achieved under United States standards. Imported poultry and poultry products must also be processed by the exporting country in facilities and under conditions that achieve that same level of sanitary protection. In addition, paragraph (k) amends section 17(d)(2) of the PPIA (21 U.S.C. § 466(d)(2)) to allow the Secretary of Agriculture to treat the meat and poultry standards of exporting countries as ''equivalent to'' United States standards if the exporting countries provide the Secretary with sufficient scientific evidence to demonstrate that their standards achieve the level of sanitary protection achieved under the United States standard. Subtitle B, section 431, paragraph (l),

Title IV, of the Uruguay Round Agreements Act similarly amends section 20(e)(1), subparagraphs (A) and (B) of the Federal Meat Inspection Act (21 U.S.C. 620(e)(1)(A) and (B)).

Because this codification is required by GATT, we expect no adverse public reaction resulting from this change in regulatory language. Therefore, unless notice is received within 30 days that someone wishes to submit adverse or critical comments, the action will become final 60 days after publication in the **Federal Register**. If critical comments are received, the final rulemaking notice will be withdrawn and a proposed rulemaking notice will be published. The proposed rulemaking notice will establish a comment period.

**DATES:** This action will become effective September 26, 1995 unless notice is received on or before August 28, 1995 that adverse or critical comments will be submitted.

**FOR FURTHER INFORMATION CONTACT:** Dr. Paula M. Cohen, Director, Regulations Development, Policy, Evaluation and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 720–7164.

**SUPPLEMENTARY INFORMATION:**

### Background

Sections 327.2 and 327.4 of the Federal meat inspection regulations and §§ 381.196 and 381.197 of the poultry products inspection regulations currently require that foreign country meat and poultry inspection systems be ''at least equal to'' those in the United States if foreign countries wish to export meat and poultry products to the United States. In December, 1994, however, in accordance with GATT's Uruguay Round negotiations, the President of the United States signed the Uruguay Round Agreements Act into law. Under this new law, drafted to comply with GATT, the United States can no longer require foreign countries wishing to export meat and poultry products to have meat and poultry inspection systems that are ''at least equal'' to those in the United States; instead, foreign inspection systems must be ''equivalent to'' domestic inspection systems. Therefore, FSIS is amending its regulations to require that foreign inspection systems that export meat and poultry products to the United States be ''equivalent to'' domestic inspection systems.

### Executive Order 12866

This rule has been determined to be not significant and therefore has not been reviewed by the Office of Management and Budget.

### Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act and the Poultry Products Inspection Act (PPIA) from imposing any marking or packaging requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States.

This rule is not intended to have retroactive effect.

There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or the PPIA.

### Effect on Small Entities

The Administrator has made an initial determination that this rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This direct final rule does not impose any requirements on American entities. It applies only to foreign countries that wish to export meat and poultry products to the United States.

### List of Subjects

*9 CFR Part 327*

Food Labeling, Food Packaging, Imports, Meat Inspection

*9 CFR Part 381*

Food labeling, Food packaging, Imports, Poultry and poultry products.

For the reasons set out in the preamble, 9 CFR parts 327 and 381 are amended as follows:

## PART 327—IMPORTED PRODUCTS

1. The authority citation for part 327 continues to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

**§§ 327.2 and 327.4 [Amended]**

2. Remove the word's ''at least equal to'' and add, in their place, the words ''equivalent to'' in the following places:

Section 327.2(a)(1), (a)(2)(i) introductory text, (a)(2)(ii) introductory text, (a)(2)(iv) introductory text, the text of the Certificate following paragraph (a)(3), (a)(4), and the text of each Certificate following 327.4 (a) and (b).

## PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

**Authority:** 7 U.S.C 138f; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

**§ 381.196 [Amended]**

2. Remove the words ''at least equal to'' and add, in their place, the words ''equivalent to'' in the following places:

Section 381.196(a)(1), (a)(2)(i) introductory text, (a)(2)(ii) introductory text, (a)(2)(iv) introductory text, the text of the Certificate following paragraph (a)(3), and (a)(4).

Done at Washington, DC, on July 18, 1995.

**Michael R. Taylor,**

*Acting Under Secretary for Food Safety.*

[FR Doc. 95–18480 Filed 7–27–95; 8:45 am]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 95–NM–116–AD; Amendment 39–9325; AD 95–13–04]**

## Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 95–13–04 that was sent previously to all known U.S. owners and operators of certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes by individual letters. This AD requires a revision to the Airplane Flight Manual to prohibit the use of mach trim and to add speed restrictions if the autopilot is disengaged or inoperative. This AD also requires installation of an associated placard.

This amendment is prompted by deficiencies that were discovered during a recent review of vendor documentation of the horizontal stabilizer trim control unit. The actions specified by this AD are intended to prevent such deficiencies, which could result in a nose-up trim runaway when a single component in the mach trim circuits fails.

**DATES:** Effective August 14, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 95–13–04, issued on June 16, 1995, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before September 26, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–116–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Canadair, Aerospace Group, P. O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Peter Cuneo, Electrical Engineer, Systems and Equipment Branch, ANE–173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7506; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:** On June 16, 1995, the FAA issued priority letter AD 95–13–04, applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes. Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that, during a recent Canadair review of vendor documentation of the horizontal stabilizer trim control unit (HSTCU), certain deficiencies were discovered. The reliability of the HSTCU was found to be lower than anticipated due to circuit design deficiencies. When such deficiencies exist in the HSTCU, and a single component in the mach trim circuits fails, a nose-up trim runaway could occur.

Bombardier has issued Canadair Regional Jet Temporary Revision No. TR RJ/43 to the Airplane Flight Manual (AFM). This temporary revision advises the flightcrew that the use of mach trim is prohibited and that speed restrictions must be applied if the autopilot is disengaged or inoperative. Transport Canada Aviation issued Canadian airworthiness directive CF95–08, dated June 8, 1995, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued priority letter AD 95–13–04 to require a revision to the Limitations Section of the FAA-approved AFM to prohibit the use of mach trim and to add speed restrictions if the autopilot is disengaged or inoperative. The actions are required to be accomplished in accordance with the temporary revision to the AFM previously described.

In addition, the FAA finds that in order to ensure flightcrew awareness, the installation of a placard is necessary to advise the flightcrew of the operations restrictions discussed previously.

This AD is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on June 16, 1995, to all known U.S. owners and operators of certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–116–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined

further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 USC 106(g), 40101, 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Bombardier, Inc. (formerly Canadair) 95–13–04:** Amendment 39–9325. Docket 95–NM–116–AD.

*Applicability:* Model CL–600–2B19 (Regional Jet Series 100) series airplanes, serial numbers 7003 and subsequent, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously. To prevent a nose-up trim runaway, accomplish the following:

(a) Within 24 hours after the effective date of this AD, accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Install a placard adjacent to the primary flight display next to the airspeed limitation placard, to read:

''USE OF MACH TRIM IS PROHIBITED. IF THE AUTOPILOT IS DISENGAGED OR INOPERATIVE, RESTRICT SPEED TO 250 KIAS OR 0.7 MACH.''

(2) Revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to include the following information. The requirements of this paragraph may be accomplished by inserting a copy of this AD, or Canadair Regional Jet Temporary Revision No. TR RJ/43, into the AFM.

''USE OF MACH TRIM IS PROHIBITED. IF THE AUTOPILOT IS DISENGAGED OR INOPERATIVE, RESTRICT SPEED TO 250 KIAS OR 0.7 MACH.''

**Note 1:** When the temporary revision has been incorporated in the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revision is identical to that specified in Canadair Regional Jet Temporary Revision No. TR RJ/43.

(3) Revise the Limitations Section of the FAA-approved AFM to include the following information. The requirements of this paragraph may be accomplished by inserting a copy of this AD into the AFM.

''Prior to the accomplishment of Bombardier Alert Service Bulletin S.B. A601R–27–054, dated June 12, 1995, when the Mach trim system is disengaged, the ''MACH TRIM'' caution message will be displayed on the Engine Indication and Crew Alerting System (EICAS), and the Mach trim engage/disengage switch ''INOP'' legend will be illuminated. The EICAS message may be scrolled out of view prior to takeoff, but the switch ''INOP'' light will remain illuminated.''

(b) 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, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) 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.

(d) This amendment becomes effective on August 14, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 95–13–04, issued on June 16, 1995, which contained the requirements of this amendment.

Issued in Renton, Washington, on July 24, 1995.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 95–18585 Filed 7–27–95; 8:45 am]

**BILLING CODE 4910–13–U**

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## 14 CFR Part 71

**[Airspace Docket No. 94–ASW–15]**

## Revocation of Class E Airspace; Newgulf, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This action revokes the Class E airspace at Newgulf Airport, Newgulf, TX. The cancellation of the Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) A, standard instrument approach procedure (SIAP) serving the Newgulf Airport, TX, has prompted this action. Additionally, the Newgulf Airport, TX, was officially closed December 31, 1993. Therefore, this Class E airspace is no longer needed. The intended effect of this action is to relinquish control over this airspace that is no longer needed for IFR operations at Newgulf, TX.

**DATES:** *Effective Date:* 0901 UTC, August 14, 1995.

*Comment Date:* Comments must be received on or before September 26, 1995.

**ADDRESSES:** Send comments on the rule in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 94–ASW–15, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Day, System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments on the Rule

Although this action is a final rule, which involves the removal of Class E airspace at Newgulf, TX, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the ''DATES'' section. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Interested parties are invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revoke's the 700 foot Class E airspace at Newgulf, TX. The cancellation of the VOR/DME A, SIAP serving the Newgulf Airport, Newgulf, TX, has prompted this action. Additionally, the Newgulf Airport, was officially closed December 31, 1993. Class E airspace extending upward from 700 feet above ground level (AGL) is no longer needed to contain IFR operations at Newgulf, TX.

Since this action merely involves the revocation of Class E airspace as a result of the airport closure and cancellation of a SIAP, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. The Class E airspace must be removed to avoid confusion on the part of the pilots flying in the vicinity of the closed Newgulf airport, and to promote the safe and efficient handling of air traffic in the area. Therefore, I find that notice and public procedure under 5 U.S.C. 553 are unnecessary and good cause exists for making this amendment effective in less than thirty days.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, *Airspace Designations and Reporting Points,* dated July 18, 1994, and effective September 16, 1994, is amended as follows:

*Paragraph 6005 Class E airspace extending upward from 700 feet above the surface.*

* * * * *

**ASW TX E5 Newgulf, TX [Revoke]**

* * * * *

Issued in Fort Worth, TX, on July 17, 1995.

**Albert L. Viselli,**

*Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 95–18592 Filed 7–27–95; 8:45 am]

BILLING CODE 4910–13–M

## CONSUMER PRODUCT SAFETY COMMISSION

## 16 CFR Part 1700

## Final Rule: Requirements for Child-Resistant Packaging; Packages Containing 250 mg or More of Naproxen

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is issuing a rule to require child-resistant packaging for naproxen preparations containing 250 mg or more of naproxen per retail package. Naproxen is marketed as an anti-inflammatory drug. It is used to treat various forms of arthritis, mild to moderate pain, and menstrual pain. The Commission has determined that child-resistant packaging is necessary to protect children under 5 years of age from serious personal injury and serious illness resulting from ingesting naproxen. The Commission takes this action under the authority of the Poison Prevention Packaging Act of 1970.

**DATES:** The rule will become effective on February 6, 1996, and applies to naproxen preparations packaged on or after that date.

**FOR FURTHER INFORMATION CONTACT:** Michael Bogumill, Division of Regulatory Management, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400 ext. 1368.

**SUPPLEMENTARY INFORMATION:**

### A. Background

*1. Relevant Statutory and Regulatory Provisions*

The Poison Prevention Packaging Act of 1970 (''PPPA''), 15 U.S.C. 1471–1476, authorizes the Commission to establish standards for the ''special packaging'' of any household substance if (1) The degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance.

Special packaging, also referred to as ''child-resistant (CR) packaging,'' is packaging that (1) Is designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) is not difficult for ''normal adults'' to use properly. 15 U.S.C. 1471(4). Household substances for which the Commission may require CR packaging include (among other categories) foods, drugs, or cosmetics as these terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). 15 U.S.C. 1471(2)(B). The Commission has performance requirements for special packaging. 16 CFR 1700.15, 1700.20.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CR packaging only if the manufacturer (or packer) also supplies the substance in CR packages of a popular size, and the non-CR packages bear conspicuous labeling stating: ''This package for households without young children.'' 15 U.S.C. 1473(a).

*2. Naproxen*

Naproxen is a nonsteroidal anti-inflammatory drug (''NSAID''). This class of compounds is used to treat various forms of arthritis, mild to moderate pain, and menstrual pain. As discussed below, the Commission is aware of many reports of poisoning incidents involving naproxen in children under 5 years old.

Until recently, naproxen was a prescription drug that was required to be in child-resistant packaging by the

Commission's regulation of human oral prescription drugs, 16 CFR 1700.14(a)(10). By a letter dated January 11, 1994, the Food and Drug Administration (''FDA'') granted nonprescription (''over-the-counter,'' or ''OTC'') status to the sodium salt of naproxen.

The patent for naproxen expired in 1993. The OTC naproxen product approved by the FDA is currently manufactured by the original patent holder and marketed by another company as a joint venture. In accordance with FDA's regulations, these two companies have sole marketing rights until January 11, 1997. Currently, the companies are voluntarily placing naproxen in CR packaging.

The OTC formulation of naproxen consists of naproxen sodium and is equivalent to 200 mg of naproxen and 20 mg of sodium per tablet. The recommended dose is 1 tablet every 8 to 12 hours. The maximum daily dose is 3 tablets for patients between the ages of 12 and 65 and 2 tablets for those over 65. The drug is not recommended for children under 12 years old except under the supervision of a doctor. However, naproxen is used to treat juvenile arthritis in children over 2 years.(5) [1]

Although the current marketers are voluntarily placing naproxen in child-resistant packaging, a mandatory special packaging standard for naproxen products would ensure that other companies that may market such products in the future would use CR packaging. As discussed below, an increased incidence of accidental ingestions by children under 5 involving ibuprofen (another NSAID) after it became available OTC, supports this action. A mandatory standard would also enable the Commission to ensure that the packaging used meets the performance requirements of the PPPA test protocol at 16 CFR 1700.15, 1700.20.

*3. The Proposed Rule*

On November 14, 1994, the Commission issued a proposed rule that would require CR packaging for OTC drugs containing the equivalent of 250 mg or more of naproxen. 59 FR 56445. As discussed below, the Commission received 4 comments in response to the proposed rule. All were in favor of issuing the rule.

The Commission also received a request to extend the comment period from Syntex Corporation (''Syntex''), one of the companies involved in the joint venture for temporary exclusive marketing rights for naproxen. Syntex stated that it needed additional time to prepare a response to the proposed rule since it had recently been acquired by Roche. The Commission granted the request for an extension of time. 60 FR 2716 (January 11, 1995). However, the Commission did not subsequently receive any comments from Syntex.

**B. Toxicity of Naproxen**

The Commission's Directorate for Health Sciences reviewed the toxicity of naproxen. Side effects commonly associated with naproxen and other NSAID's include dose-related gastrointestinal (GI) complications such as constipation, heartburn, abdominal pain, nausea, and diarrhea. Other adverse effects include headache, dizziness, drowsiness, pruritus (itching), and tinnitus (ringing in the ears).(5)

Naproxen may also cause liver and kidney toxicity, but these effects are infrequent with routine therapeutic use. Kidney toxicity has been documented in children following naproxen therapy. One report describes a two-year-old male with juvenile arthritis who developed acute renal failure and hyperkalemia (high blood potassium) following treatment with 20 mg/kg/day of naproxen sodium for 1 month.(5)

Acute overdosage of naproxen may result in mild, transient effects, including drowsiness, GI disturbances, and prolonged clotting times. Life-threatening effects are uncommon, but serious complications such as seizures, apnea (cessation of breathing), metabolic acidosis (reduced blood pH), and impaired kidney function have been documented. The acute lethal dose of naproxen is unknown and the severity of symptoms is not always dose-related.(5)

The Commission's Directorate for Epidemiology reviewed data from the National Electronic Injury Surveillance System (''NEISS'') involving hospital emergency room treatment of children under 5 years old who ingested naproxen. NEISS is a probability sample based on hospital emergency rooms nationwide. There were nine reported cases from 1980 to 1989 and 26 reported cases from 1990 to 1994. The average annual number of estimated cases during these time periods was 50 and 260, respectively. In 1982, one case resulted in the hospitalization of a 2-year-old male. In 1994, the Commission had reports of three emergency room cases, each involving a 2-year-old child who was examined or treated and released following ingestion of naproxen.(7)

The Commission's Directorate for Health Sciences requested 1993 incident data from the American Association of Poison Control Centers (''AAPCC'') related specifically to naproxen in children under 5 years old. (AAPCC data from 1985 to 1992 were unavailable because naproxen poisoning incidents were not categorized separately from other NSAID incidents unless they resulted in death.) Of the 1,413 naproxen ingestions reported for 1993, two resulted in outcomes characterized by AAPCC as ''moderate,'' i.e., pronounced and prolonged symptoms that generally require treatment but are not life-threatening. In addition, 53 of the ingestions resulted in outcomes characterized by AAPCC as ''minor,'' i.e., symptoms present, but mild with rapid and complete resolution. Forty-eight cases were documented as potentially toxic, but the ultimate disposition was not reported. From 1985 to 1993, there were no naproxen-related fatalities in children reported to the AAPCC.(5)

Several cases of naproxen poisoning in children were reported through the FDA's Adverse Reactions Reporting System (''ARRS'') and the Worldwide Safety Surveillance and Reporting division of Syntex, the manufacturer of naproxen. These include: An 8-month-old girl who died following daily treatment for fever and an upper respiratory tract infection with 100 to 400 mg naproxen sodium for 5 days; a 2-year-old boy who recovered after developing drowsiness, ataxia (loss of voluntary muscle coordination), and a prolonged bleeding time following ingestion of naproxen (up to 2 grams), hydrogen peroxide, and eucalyptus oil; a 2-year-old girl who suffered dyspepsia (indigestion) after ingesting 625 mg of naproxen; and a 5-year-old girl who developed convulsions after she accidently ingested an unknown amount of naproxen sodium.(5)

NEISS data for ingestions of ibuprofen, another popular NSAID that began to be marketed OTC in 1984, show that there was a larger estimated number of children under 5 years old treated in hospital emergency rooms for each year from 1984–1994 after ibuprofen was granted OTC status, than for each year from 1980–1983.(7)

Most cases of naproxen poisoning described in the literature involve adults. These patients generally developed GI side effects and several experienced seizures. The incidence of side effects may differ in children and adults. Studies involving children taking naproxen showed that, compared to adults, the children's incidence of: rash and prolonged bleeding times were

[1] Numbers in parentheses refer to documents at the end of this notice.

increased; GI and central nervous system (CNS) reactions were similar; and other reactions decreased.(5)

The relevant literature shows that naproxen and other NSAID's have adverse fetal effects when used during pregnancy. A newborn delivered 8 hours after his mother ingested an overdose of 5 grams of naproxen developed severe hyponatremia (low blood sodium) and water retention with indications of cerebral irritation and paralytic ileus. It was tentatively diagnosed that naproxen adversely affected renal function. Complications were reported in three newborns after maternal naproxen treatment to prevent premature labor. One newborn died, and the autopsy showed a brain hemorrhage, multiple gastric ulcers, extensive GI bleeding, and a cardiovascular birth defect that is a known adverse effect of NSAID's. A 7-day-old breast-fed infant boy developed symptoms associated with naproxen toxicity after his mother was treated with 1 g naproxen and 800 mg of antibiotic for 3 days.(5)

**C. Level for Regulation**

The Commission is issuing a rule that requires special packaging for OTC naproxen products containing the equivalent of 250 mg or more naproxen per retail package. This level is based on established guidelines for medical treatment following ingestion of NSAID's. It is also based on a known toxic dose of naproxen, reduced by a safety factor to account for biologic variability. (5 and 10)

The precise toxic level of naproxen in humans is unknown. However, guidelines established for pediatric NSAID overdose suggest medical treatment for young children who ingest five times the maximum single therapeutic dose. Therefore, the dose of naproxen requiring medical intervention would be 5 mg/kg (the maximum single therapeutic dose) times five, or 25 mg/kg. In a 10-kg child, this is equivalent to 250 mg of naproxen, or one and one-quarter OTC tablets. (5 and 10)

The same level results when calculated using a different approach. When treatment information for poisonings is unavailable, the staff typically uses a known toxic dose divided by a safety factor of 10 to determine the level for regulation. Applying this factor to the 250 mg/kg dose of naproxen that caused life-threatening acidosis in a 15-year-old girl also results in a level of 25 mg/kg, or 250 mg in a 10-kg child. (5 and 10)

The Commission emphasizes that the 250 mg level applies to the total amount of the product sold at retail in a single package, regardless of whether the contents of the package are loose or also packaged in non child-resistant envelopes or strip packages. In administering the PPPA regulations for acetaminophen, iron-containing preparations and ibuprofen, the Commission has encountered instances in which product manufacturers package one or two tablets in individual envelopes for sale to consumers seeking medication for immediate use. Because each envelope is an individual retail unit and contains less than the amount of ibuprofen or acetaminophen subject to regulation, the envelopes need not be child-resistant.

However, the Commission has also encountered instances in which repackagers have packaged multiple non child-resistant envelopes of acetaminophen, iron, or ibuprofen in outer blister packs or clamshell packages that contain a total quantity of these products in excess of the regulatory minimum, but that are also not child-resistant. We note that the regulatory minimum contained in a ''single package'' refers to the total contents of the retail package, not the contents of each individual envelope. To avoid future confusion on this issue, this regulation refers to the contents of the ''retail package'' to clarify that whether a product requires child-resistant packaging is based on the total amount of naproxen packaged for sale at retail.

**D. Comments on the Proposed Rule**

The Commission received four comments responding to the proposed rule. These came from the American Society of Health-System Pharmacists, the National Association of Pediatric Nurse Associates and Practitioners, and two groups of university students. All agreed that the Commission should require CR packaging for naproxen. In addition, the students argued for an effective date shorter than the 180-day period proposed by the Commission. One group of students advocated a 90-day effective date. The argument for the shorter date was that the companies with exclusive marketing rights are voluntarily using CR packaging now.

The Commission does not agree that a shorter effective date is necessary. In general, the PPPA requires at least 180 days before a regulation takes effect. 15 U.S.C. 1471n. As explained in section F below, the Commission does not believe that a shorter period is justified in this case.

**E. Statutory Considerations**

*1. Hazard to Children*

As noted above, the toxicity data concerning children's ingestion of naproxen sodium demonstrate that this compound can cause serious illness and injury to children. Moreover, the preparations are readily available to children.(5) The Commission concludes that a regulation is needed to ensure that products subject to the regulation will be placed in CR packaging by any new manufacturers. In addition, the regulation will enable the Commission to enforce the CR packaging requirement and ensure that effective CR packaging is used.

Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission finds that the degree and nature of the hazard to children from ingesting naproxen is such that special packaging is required to protect children from serious illness. The Commission bases this finding on the toxic nature of these products, described above, and their accessibility to children in the home.

*2. Technical Feasibility, Practicability, and Appropriateness*

In issuing a standard for special packaging under the PPPA, the Commission is required to find that the special packaging is ''technically feasible, practicable, and appropriate.'' 15 U.S.C. 1472(a)(2). Technical feasibility may be found when technology exists or can be readily developed and implemented by the effective date to produce packaging that conforms to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Packaging is appropriate when complying packaging will adequately protect the integrity of the substance and not interfere with its intended storage or use. (9)

The current marketers of OTC naproxen use packaging that not only is child resistant, but also is easier for adult consumers to open. Therefore, the Commission concludes that CR packaging for naproxen is technically feasible, practicable, and appropriate.

*3. Other Considerations*

In establishing a special packaging standard under the PPPA, the Commission must consider the following:

a. The reasonableness of the standard;

b. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

c. The manufacturing practices of industries affected by the PPPA; and

d. The nature and use of the household substance. 15 U.S.C. 1472(b).

The Commission has considered these items with respect to the various determinations made in this notice, and finds no reason to conclude that the rule is unreasonable.

### F. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n.

The Commission does not believe that a shorter effective date is necessary to protect the public interest. Naproxen is currently sold in CR packaging by the companies that have exclusive marketing rights until January 11, 1997. The Commission does not have any indication that significant quantities of naproxen will be marketed in non-CR packaging before a 180 day effective date, with the possible exception of a single size non-CR package as allowed under the PPPA. Thus, the Commission finds that a 180 day effective date is consistent with the public interest. The final rule will apply to products that are packaged on or after the effective date.

### G. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

For the proposed rule, the Commission's Directorate for Economics prepared a preliminary economic assessment of a rule to require special packaging for naproxen preparations with 250 mg or more of naproxen in a single package. Based on this assessment, the Commission concluded that such a requirement would not have a significant impact on a substantial number of small businesses or other small entities because the current marketers of naproxen are already using CR packaging and have sole marketing rights for 3 years. Furthermore, the relatively low costs of CR packages should not be an entry burden for future marketers. The Commission received no comments on its preliminary analysis and is not aware of any changes that would affect the Commission's previous conclusion. Thus, the Commission concludes that the rule to require special packaging for naproxen preparations having 250 mg or more of naproxen would not have any significant economic effect on a substantial number of small entities. (8)

### H. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the PPPA requirements for naproxen preparations.

The Commission's regulations state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(3). In connection with the proposed rule, the Commission determined that CR packages for naproxen preparations would have no significant effects on the environment. The Commission is unaware of any developments to change this preliminary assessment. Therefore, because the rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required. (8)

### List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, 16 CFR part 1700 is amended as follows:

## PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

**Authority:** Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 88 Stat. 1231. 15 U.S.C. 2079(a).

2. Section 1700.14 is amended by republishing paragraph (a) introductory text and adding new paragraph (a)(25), to read as follows:

### § 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(25) *Naproxen.* Naproxen preparations for human use and containing the equivalent of 250 mg or more of naproxen in a single retail package shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c).

Dated: July 24, 1995.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

### List of Relevant Documents

(**Note.** This list of relevant documents will not be printed in the Code of Federal Regulations.)

1. Vale, J.A. and Meredith, T.J., Acute poisoning due to non-steroidal anti-inflammatory drugs: clinical features and management. Medical Toxicology 1:12–31, 1986.

2. Memorandum from Terry Kissinger, Ph.D., EPHA, to Jacqueline Ferrante, Ph.D., HSPS, ''Injury Data on Naproxen and Ibuprofen for the 1980–1993 Period,'' May 27, 1994.

3. Memorandum from Charles Wilbur, HSPS, to Jacqueline Ferrante, Ph.D., HSPS, ''Technical Feasibility, Practicability, and Appropriateness Determination for the Proposal to Require Child-Resistant Packaging for OTC Preparations Containing Naproxen,'' June 7, 1994.

4. Memorandum from Marcia P. Robins, ECSS, to Jacqueline Ferrante, Ph.D., HSPS, ''Preliminary Assessment of Economic and Environmental Effects of a Proposal to Require Child-Resistant Packaging,'' September 28, 1994.

5. Memorandum from Sandra Inkster, Ph.D., HSHE, to Jacqueline Ferrante, Ph.D., HSPS, ''Review of Naproxen Toxicity,'' July 17, 1994.

6. Briefing memorandum from Jacqueline Ferrante, Ph.D., HSPS, to the Commission, ''Proposed Special Packaging Standard for Naproxen,'' September 29, 1994.

7. Memorandum from Terry Kissinger, Ph.D., EPHA, to Jacqueline Ferrante, Ph.D., HSPS, ''Update of Injury Data Involving Naproxen and Ibuprofen,'' May 4, 1995.

8. Memorandum from Marcia P. Robins, ECSS, to Jacqueline Ferrante, Ph.D., HSPS, ''Final Regulatory Flexibility Act Analysis: Child-Resistant Packaging for OTC Packages Containing 250 mg or more of Naproxen,'' June 12, 1995.

9. Memorandum from Charles Wilbur, HSPS, to Jacqueline Ferrante, Ph.D., HSPS, ''Technical Feasibility, Practicability, and Appropriateness Determination for the Final Rule to Require Child-Resistant Packaging for OTC Preparations Containing Naproxen,'' May 4, 1995.

10. Briefing memorandum from Jacqueline Ferrante, Ph.D., HSPS, to the Commission, ''Final Special Packaging Standard for Naproxen,'' June 29, 1995.

[FR Doc. 95–18504 Filed 7–27–95; 8:45 am]
BILLING CODE 6355–01–P

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Parts 901 and 924

## Alabama and Mississippi Regulatory Programs

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

**ACTION:** Notice of decision.

**SUMMARY:** OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Alabama and Mississippi. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: Promptly repair or compensate for subsidence-caused material damaged to noncommercial buildings and to occupied dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Alabama and Mississippi and consideration of public comments, OSM has decided that initial enforcement in Alabama will be accomplished through State and OSM enforcement and that initial enforcement is not reasonably likely to be required in Mississippi and therefore implementation in that State will be accomplished through the State program amendment process.

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

**FOR FURTHER INFORMATION CONTACT:** Jesse Jackson, Jr., Field Office Director, Birmingham Field Office, OSM, 135 Gemini Circle, Suite 215, Birmingham, Alabama, 35209, Telephone: (205) 290–7287.

**SUPPLEMENTARY INFORMATION:**

### A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

### B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR part 817 to implement the performance standards of section 720(a) (1) and (2) of SMCRA (60 FR 16722).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

*Alternative OSM enforcement decisions.* 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 10, 1995, **Federal Register** (60 FR 18044) and as reiterated below, enforcement could be accomplished by State, OSM, or joint State and OSM enforcement of the requirements, or by a State after it has amended its program.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, than OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the

State program but are not enforceable back to October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.129a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also implement the new definitions at 30 CFR 701.5 of ''drinking, domestic or residential water supply,'' ''material damage,'' ''non-commercial building,'' ''occupied dwelling and structures related thereto,'' and ''replacement of water supply'' that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c)(2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

**C. Enforcement in Alabama**

*Alabama program activity, requirements, and enforcement.* By letter to Alabama dated December 14, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Alabama (Administrative Record No. A1–520). By letter dated January 12, 1995, Alabama responded to this request (Administrative Record No. AL–521).

Alabama stated that ten underground coal mines were active in Alabama after October 24, 1992. Alabama stated that the Alabama program does not fully authorize enforcement of the repair or compensation of material damage requirements of Section 720(a) of SMCRA and the implementing Federal regulations. Alabama's regulations are silent on the issue of replacement of water supplies damaged by subsidence but do contain a ''to the extent required by State law'' limitation on repair of material damage to structures. Alabama has not determined whether a change to the State Act is necessary to implement regulation change which would be required under the Energy Policy Act (EPACT). Further analysis would be necessary by the State legal staff before a determination can be made of the need for statutory revisions.

Alabama has assumed since the passage of EPACT that the retroactive enforcement of its provisions by Alabama would be possible until regulatory changes can be made. Alabama has in fact adopted the position that since the effective date of EPACT they have had enforcement authority of its provisions.

Since October 24, 1992, Alabama has had only one citizen complaint where alleged damage to structures from subsidence has existed. This complaint covered a church and several houses. No complaints have been received alleging damage to water supplies due to subsidence.

Representatives from OSM's Birmingham Field Office met with Alabama on May 2, 1995. Alabama confirmed it has the authority to enforce the water replacement provisions of 30 CFR 817.41(j) for underground mining activities conducted after October 24, 1992. The State will not, however, be able to fully enforce the repair or compensation of material damage resulting from subsidence provisions of 30 CFR 817.121(c)(2) because of certain limitations placed on compensation in the current State status.

*Comments.* On April 10, 1995, OSM published in the **Federal Register** (60 FR 18044) an opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Alabama. The comment period closed on April 20, 1995. The comment period was subsequently extended to May 10, 1995 (60 FR 20193, April 25, 1995). Because OSM did not receive a request for one, OSM did not hold a public hearing. OSM received one comment in response to its notice. Following is OSM's response to it.

OSM received comments from one party in response to its notice (Administrative Record Number AL–546). The party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section I.B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. Specifically, the party commented that SMCRA contains various statutory procedure for the amendment, preemption, and substitution of Federal enforcement of State programs (sections 503, 505, and 521(b)) that should be used in lieu of direct interim Federal enforcement.

In response to this comment, OSM's position remains as was stated in the March 31, 1995, preamble for the Federal regulations at 30 CFR 843.25, which in part implement section 720 of SMCRA:

> OSM has concluded that it is not clear from the legislation or legislative history, how Congress intended that section 720 was to be implemented, in light of existing SMCRA provisions for State primacy. Thus, OSM has a certain amount of flexibility in implementing section 720. After weighing these considerations, OSM intends to implement section 720 promptly, but was pursue Federal enforcement without undermining State primacy under SMCRA.

(60 FR 16722, 16743). Using this rationale, OSM concludes that there is no inconsistency in its implementation of section 720 of SMCRA with sections 503, 505, and 521(b) of SMCRA.

Further, the party commented that Congress' intent was that agreements between coal mine operators and landowners would be used to ensure that the protection standards of section 720 of SMCRA would occur rather than enforcement by State regulatory authorities and OSM. The party did not supply any legislative history to support this conclusion, and the plain language of section 720 of SMCRA does not support this conclusion.

Lastly, the party commented that the waiver of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertion. The Following response to a similar comment in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745) also applies to this comment.

> [The commenter stated that] the proposal to provide for direct Federal enforcement ignores Federal case law which indicates that, as a general proposition, the State

program, not SMCRA, is the law within the State. OSM recognizes that, under existing rules implementing SMCRA, States with approved regulatory programs have primary responsibility for implementing SMCRA, based on the approved program. However, in this rule, OSM has carved out a limited exception to the general proposition, to the extent necessary to give reasonable force and effect to section 720, while maintaining so far as possible State primacy procedures. OSM believes that the process adopted in this final rule is consistent with and authorized by Congress under the Energy Policy Act, and that case law interpreting other provisions of SMCRA is not necessarily dispositive.

*Director's Decision*. Based on the information provided by Alabama, discussions held with Alabama on May 2, 1995, and the comment discussed above, the Director has decided that enforcement of the underground coal mine subsidence control and water replacement requirements in Alabama will be accomplished through joint State and OSM enforcement. Alabama will enforce its provisions for the replacement of water supplies affected by underground mining activities conducted after October 24, 1992. OSM will enforce those provisions of 30 CFR 817.121(c)(2) pertaining to the repair of material damage resulting from subsidence that are not covered or are limited by the State provisions of underground mining activities conducted after October 24, 1992.

If circumstances within Alabama change significantly, the Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

**D. Enforcement in Mississippi**

*Mississippi program activity, requirements, and enforcement*. By letter to Mississippi dated December 14, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Mississippi (Administrative Record No. MS–328). Mississippi did not respond to this request in writing. On May 10, 1995, representatives from OSM's Birmingham Field Office and the State met to discuss how the provisions of the Energy Policy Act would be implemented. Mississippi has had no surface or underground coal mining operations for several decades. At present, Mississippi is in the process of completely revising its approved regulatory program. It was agreed that the program revision process addressed in the Federal regulations at 30 CFR Part 732 would be implemented.

*Comments*. On April 10, 1995, OSM published in the **Federal Register** (60 FR 18045) an opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Mississippi. The comment period closed on April 30, 1995. The comment period was subsequently extended to May 10, 1995 (60 FR 21093, April 25, 1995). Because OSM did not receive a request for one, OSM did not hold a public hearing. OSM received one comment in response to its notice. Following is OSM's response to it.

A mining association responded on May 12, 1995 (Administrative Record Number MS–331). The party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section I.B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. The party also commented that the waiving of ten-day notice procedures under direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745). These concerns about direct Federal enforcement are moot issues in Mississippi because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

*Director's Decision*. Based on discussions held with the State on May 10, 1995, and the comment discussed above, the Director has decided that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Mississippi is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. There have been no underground mines in Mississippi for decades. Mississippi is in the process of amending its entire regulatory program and would enforce its statutory and regulatory provisions when its program is determined to be in accordance with the revised SMCRA and consistent with the revised Federal regulations.

If circumstances within Mississippi change significantly, the Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 24, 1995.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

[FR Doc. 95–18609 Filed 7–27–95; 8:45 am]

BILLING CODE 4310–05–M

## 30 CFR Part 913

## Illinois Regulatory Program

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

**ACTION:** Notice of decision.

**SUMMARY:** OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Illinois. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: Promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Illinois, OSM has decided that initial enforcement in Illinois will be accomplished through the State program amendment process for the water replacement provisions and State enforcement for the repair or compensation of material damage provisions.

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

**FOR FURTHER INFORMATION CONTACT:** Keith M. Shank, Acting Director, Springfield Field Office, OSM, 511 West Capitol, Suite 202, Springfield, Illinois 62704, Telephone: (217) 492–4495.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. The Energy Policy Act*

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of

the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by under ground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

*B. The Federal Regulations Implementing the Energy Policy Act*

On March 31, 1995, OSM promulgated regulations at 30 CFR part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

*Alternative OSM enforcement decisions.* 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 7, 1995, **Federal Register** (60 FR 17734) and as reiterated below, enforcement could be accomplished by State, OSM, or joint State and OSM enforcement of the requirements, or by a State after it has amended its program.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the States. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also implement the new definitions at 30 CFR 701.5 of ''drinking, domestic or residential water supply,'' ''material damage,'' ''non-commercial building,'' ''occupied dwelling and structures related thereto,'' and ''replacement of water supply'' that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

**C. Enforcement in Illinois**

*Illinois program activity, requirements, and enforcement.* By letter to Illinois dated December 14, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Illinois (Administration Record No. IL–1530). By letter dated February 7, 1995, Illinois responded to this request (Administrative Record No. Il–1531).

Illinois stated that 25 underground coal mines were active in Illinois after October 24, 1992. Illinois stated that the Illinois program does not fully authorize enforcement of the new water

replacement requirements of section 720(a) of SMCRA and the implementing Federal regulations. Specifically, Illinois indicated that the State program excludes water supplies, and Illinois believes no authority exists to retroactively apply a state regulation. Illinois has no formal regulation or policy on water replacement due to diminution or contamination from mine subsidence. Illinois also stated that it does not have authority to investigate citizen complaints of water loss caused by underground mining operations conducted after October 24, 1992.

Nevertheless, in the few instances where water loss was part of a citizen complaint, Illinois has investigated and worked with the citizen and company to address allegations of water loss or contamination if attributed to mine subsidence. Illinois has investigated two citizen complaints alleging subsidence-related water supply loss or contamination as result of underground mining operations conducted after October 24, 1992: (1) Complaint No. 1 alleged that a spring fed stream went dry, and the stream served the landowner by watering cattle. The mining may or may not have occurred after October 24, 1992. The spring fed stream crosses both pre- and post-October 24, 1992, mining panels. The coal company immediately provided a trough and trucked water for continued cattle watering. The coal company has since installed waterline to a cattle watering device to maintain the water supply. (2) Complaint No. 2 alleged well water developed odor and different taste as a result of mining adjacent to but not under the well. Illinois sampled the water and found no quality problems that could be attributable to mining. This landowner is also connected to a public water supply in addition to the private well.

On February 3, 1995, Illinois proposed water replacement regulations. Proposed 62 Ill. Adm. Code 1817.121(c)(3) requires the operator to:

> Promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation operations permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.

Once passed and a date is established, the application form will be revised appropriately. Illinois' current rulemaking package should be finalized in a year or less. In addition to proposed 62 Ill. Adm. Code 1817.121(c)(3), an inventory of all drinking, domestic and residential water supplies in place at the time of permitting will be necessary to fully implement section 720(a)(2) of SMCRA. Based on this information, Illinois may require pre- and post-mining monitoring of certain planned subsidence operations. This will be determined on a case by case basis.

By letter dated April 25, 1995, Illinois stated that the approved regulatory program administered by the Illinois Department of Mines and Minerals, Land Reclamation Division (Department) is in compliance with the subsidence-related mandates of the Energy Policy Act (Administrative Record No. IL–1533). Specifically:

Illinois' current regulations codified at 62 Ill. Adm. Code 1817.121(c)(2) require repair or compensation for subsidence-related material damage to any structure. This would include repair of or compensation for damage to water delivery systems such as wells, cisterns and water lines.

On February 3, 1995, the Department submitted a proposed regulatory program amendment to OSM that requires the replacement of drinking, domestic and residential water supplies adversely affected by underground coal mining operations. The Department's proposed amendment mirrors the Energy Policy Act's language regarding water replacement.

The Department has conducted a survey of the six coal companies that conduct planned subsidence coal mining operations in Illinois. This survey has proven that water replacement is rarely an issue in this State. First of all, underground coal mining operations are conducted in thinly populated rural areas; very few residences are ever impacted by planned subsidence operations. Secondly, of the six companies survey, two companies purchase all residences prior to mining, one company avoids residences in its high extraction retreat mining operation, and the other three companies have existing internal policies providing for water replacement should the need arise.

The Department has received only two citizen's complaints involving water replacement issues during the period from October 24, 1992, through the present. The Department thoroughly investigated each complaint and worked with the companies involved to resolve any disputes. One complaint proved to be unfounded. The other complaint was successfully resolved when a waterline was installed. The Department received excellent cooperation from the companies involved during the course of these investigations and is confident that it can effectively resolve any future water replacement issues. However, as previously indicated, the likelihood of receiving any further complaints regarding this issue is extremely remote.

In summary, the Department is effectively implementing the Energy Policy Act in Illinois. The Department's regulations currently require underground coal mine operators to repair or compensate for subsidence-related damage to structures, as mandated by the Energy Policy Act. In addition, the Department will diligently pursue finalization of the water replacement regulations currently pending with OSM in order to formally render Illinois' coal mine regulatory program no less effective than counterpart Federal regulations. Finally, the Department will continue to conduct thorough investigations of any water replacement complaints that do arise and work with coal mining companies and the public at large to resolve disputes relating to this issue.

*Comments.* On April 7, 1995, OSM published in the **Federal Register** (60) FR 17734) an opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Illinois. The comment period closed on May 8, 1995. Because OSM did not receive a request for one. OSM did not hold a public hearing. OSM did not receive any comments in response to its notice.

*Director's Decision.* Based on the information provided by Illinois, the Director has decided that initial enforcement of the water replacement requirements in Illinois is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. On February 3, 1995, Illinois submitted a proposed regulatory program amendment to OSM that requires the replacement of drinking, domestic, and residential water supplies adversely affected by underground coal mining operations. These revisions are intended to make the Illinois regulations consistent with the revised Federal regulations. Twenty-five underground mines produced coal in Illinois since October 24, 1992.

There have been only two citizen complaints concerning water replacement issues and Illinois has investigated them in a thorough and complete manner. Once Illinois has amended its program to be in accordance with the revised SMCRA and Federal regulations, it will enforce its State statutory and regulatory provisions. The Director has decided that initial enforcement of the underground coal mine subsidence

control requirements will be accomplished through State enforcement since Illinois has regulatory provisions in place that correspond to the Federal regulations at 30 CFR 817.121(c) and has the authority to implement them for all underground mining activities conducted after October 24, 1992.

If circumstances within Illinois change significantly, the Director may reassess this decision. Formal reassessment of this decisions would be addressed by **Federal Register** notice.

Dated: July 24, 1995.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

[FR Doc. 95–18610 Filed 7–27–95; 8:45 am]

**BILLING CODE 4310–05–M**

## 30 CFR Part 914

## Indiana Regulatory Program

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

**ACTION:** Notice of decision.

**SUMMARY:** OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Indiana. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Indiana and consideration of public comments, OSM has decided that initial enforcement in Indiana will be accomplished through joint Indiana and OSM enforcement.

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

**FOR FURTHER INFORMATION CONTACT:** Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 226–6166.

**SUPPLEMENTARY INFORMATION:**

### A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

### B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

*Alternative OSM enforcement decisions.* 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 7, 1995, **Federal Register** (60 FR 17736) and as reiterated below, enforcement could be accomplished through the 30 CFR part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include

corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of ''drinking, domestic or residential water supply,'' ''material damage,'' ''non-commercial building,'' ''occupied dwelling and structures related thereto,'' and ''replacement of water supply'' that were adopted with the new under-ground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c)(2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

**C. Enforcement in Indiana**

*Indiana program activity, requirements, and enforcement.* By letter to Indiana dated December 13, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Indiana (Administrative Record No. IND–1438). By letter dated February (*sic*) 20, 1995, Indiana responded to this request (Administrative Record No. IND–1429) (the letter was misdated; the correct date is January 20, 1995.)

Indiana stated that six underground coal mines were active in Indiana between October 24, 1992, and July 1, 1994. Indiana also stated that Indiana statute IC 13–4.1–9–2.5 incorporates the substantive language of section 720 of SMCRA. Indiana noted that IC 13–4.1–9–2.5's requirements are expressly limited to operations conducted after June 30, 1994. Therefore, the Indiana Division of Reclamation (DOR) may not require structural repair (or compensation) or water replacement under the authority of IC 13–4.1–9–2.5 with respect to surface coal mining operations conducted on or before June 30, 1994. However, Indiana stated that preexisting Indiana program provisions provide the DOR with sufficient authority to impose the Energy Policy Act of 1992 requirements with respect to underground mining operations conducted on or before June 30, 1994.

On June 28, 1995 (Administrative Record Number IND–1493), OSM met with Indiana to discuss enforcement of the underground coal mine subsidence control and water replacement requirements in Indiana. As detailed above in its initial response to OSM concerning enforcement, Indiana stated that Indiana law at IC 13–4.1–9–2.5 incorporates the substantive language of section 720 of SMCRA and applies to underground mining operations conducted after June 30, 1994. For underground mining operations conducted in Indiana in the interim period between October 24, 1992 (the effective date of the Energy Policy Act of 1992) and June 30, 1994 (the effective date of Indiana law counterpart to the Energy Policy Act of 1992), the State concluded that the existing Indiana program provisions provide the Indiana Division of Reclamation (IDOR) with sufficient authority to impose the requirements of the Energy Policy Act of 1992 with respect to underground mining operations conducted in Indiana during the interim period. The State concluded, however, that although it believes that the IDOR has sufficient authority to impose the requirements of the Energy Policy Act of 1992 during the interim period, joint State and OSM enforcement in Indiana should be the chosen enforcement scheme in Indiana, as it would assure protection for the citizens of Indiana during the interim period Administrative Record Number IND–1494. Under this scheme, the IDOR would enforce the requirements of the Energy Policy Act of 1992 in Indiana from June 30, 1994, and during the interim period to the extent permissible under Indiana law. OSM would enforce the requirements of the Energy Policy Act of 1992 in the interim period only if a situation arose where the State could not so enforce. Indiana does not anticipate any situations where the IDOR would not be able to enforce the provisions of the Energy Policy Act of 1992 during the interim period.

*Comments.* On April 7, 1995, OSM published in the **Federal Register** (60 FR 17736) an opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Indiana. The comment period closed on May 8, 1995. Because OSM did not receive a request for one, OSM did not hold a public hearing. OSM received comments from one party in response to its notice (Administrative Record Number IND–1476).

The party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section I.B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. Specifically, the party commented that SMCRA contains various statutory procedures for the amendment, preemption, and substitution of Federal enforcement of State programs (sections 503, 505, and 521(b)) that should be used in lieu of direct interim Federal enforcement.

In response to this comment, OSM's position remains as was stated in the March 31, 1995, preamble for the Federal regulations at 30 CFR 843.25, which in part implement section 720 of SMCRA:

> OSM has concluded that it is not clear from the legislation or legislative history, how Congress intended that section 720 was to be implemented, in light of existing SMCRA provisions for State primacy. Thus, OSM has a certain amount of flexibility in implementing section 720. After weighing these considerations, OSM intends to implement section 720 promptly, but will pursue federal enforcement without undermining State primacy under SMCRA.

(60 FR 16722, 16743). Using this rationale, OSM concludes that there is no inconsistency in its implementation of section 720 of SMCRA with sections 503, 505, and 521(b) of SMCRA.

Further the party commented that Congress' intent was that agreements between coal mine operators and

landowners would be used to ensure that the protective standards of section 720 of SMCRA would occur rather than enforcement by State regulatory authorities and OSM. The party did not supply any legislative history to support this conclusion, and the plain language of section 720 of SMCRA does not support this conclusion.

Lastly, the party commented that the waiving of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertion. The following response to a similar comment in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745) also applies to this comment.

[The commenter stated that] the proposal to provide for direct Federal enforcement ignores Federal case law which indicates that, as a general proposition, the State program, not SMCRA, is the law within the State. OSM recognizes that, under existing rules implementing SMCRA, States with approved regulatory programs have primary responsibility for implementing SMCRA, based on the approved program. However, in this rule OSM has carved out a limited exception to the general proposition, to the extent necessary to give reasonable force and effect to section 720, while maintaining so far as possible State primacy procedures. OSM believes that the process adopted in this final rule is consistent with and authorized by Congress under the Energy Policy Act, and that case law interpreting other provisions of SMCRA is not necessarily dispositive.

*Director's decision.* Based on the information discussed above, the Director has decided that enforcement of the underground coal mine subsidence control and water replacement requirements in Indiana will be accomplished through joint State and OSM enforcement. The Director has made this decision after soliciting public comment (one comment was received) and providing opportunity for public hearing (no requests for a hearing were received), and considering information provided by Indiana by letter dated February (*sic*) 20, 1995, and in discussions held with Indiana on June 28, 1995. The Director has concluded that Indiana law at IC 13–4.1–9–2.5 authorizes enforcement of provisions of the Energy Policy Act of 1992 in Indiana from June 30, 1994. As for enforcement during the interim period (October 24, 1992, through June 30, 1994), Indiana will enforce the provisions of the Energy Policy Act of 1992 to the extent authorized by existing Indiana law. OSM will enforce the provisions of the Energy Policy Act of 1992 during the interim period in any circumstances where the State cannot so enforce. Neither the IDOR nor OSM anticipates any cases where the IDOR would not be able to enforce the provisions of the Energy Policy Act of 1992 during the interim period.

If circumstances within Indiana change significantly, the Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 24, 1995.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

[FR Doc. 95–18611 Filed 7–27–95; 8:45 am]

BILLING CODE 4310–05–M

## 30 CFR Part 917

## Kentucky Regulatory Program

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

**ACTION:** Notice of decision.

**SUMMARY:** OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Kentucky. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures, and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Kentucky and consideration of public comments, OSM has decided that initial enforcement in Kentucky will be accomplished through State and OSM enforcement.

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

**FOR FURTHER INFORMATION CONTACT:** William J. Kovacic, Director, Lexington Field Office, OSM, 2675 Regency Road, Lexington, Kentucky 40503, Telephone (606) 233–2894.

**SUPPLEMENTARY INFORMATION:**

### A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

### B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR part 817 to implement the performance standards of sections 720(a)(1) and (2) of SMCRA (60 FR 16722).

30 CFR 817.121(c)(2) requires in part that:

The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

*Alternative OSM enforcement decisions.* 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 7, 1995, **Federal Register** (60 FR 17739) and as reiterated below, enforcement could be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements.

(1) *State program amendment process.* If the State's promulgation of regulatory

provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817/41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection, OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of ''drinking, domestic or residential water supply,'' ''material damage,'' ''non-commercial building,'' ''occupied dwelling and structures related thereto,'' and ''replacement of water supply'' that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

### C. Enforcement in Kentucky

*Kentucky program activity, requirements, and enforcement.* By letter to Kentucky dated December 14, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Kentucky (Administrative Record No. KY–1336). By letter dated January 31, 1995, Kentucky responded to this request (Administrative Record No. KY–1337).

Kentucky stated that 410 underground coal mines were active in Kentucky after October 24, 1992. Kentucky indicated that existing State program provisions at 405 Kentucky Administrative Regulations (KAR) 18:210 section 3 are adequate State counterparts to section 720(a)(1) of SMCRA and the implementing Federal regulations. Section 720(a)(1) of SMCRA requires prompt repair or compensation to the owner for subsidence-related material damage to non-commercial buildings or occupied dwellings and related structures. Kentucky explained that it will enforce this State program provision in accordance with 405 KAR 18:210 section 3.

Kentucky stated that the Kentucky program does not fully authorize enforcement of the new water replacement requirements of section 720(a)(2) of SMCRA and the implementing Federal regulations. Kentucky submitted a program amendment to OSM dated April 29, 1994, (Administrative Record No. KY–1279) which will modify language at Kentucky Revised Statutes (KRS) 350.421. KRS 350.421, as modified, will require replacement of water loss caused by underground mining operations. OSM approved the amendment on June 27, 1995 (60 FR 33110) with two exceptions. The Director required that Kentucky amend its program to provide for the ''prompt'' replacement of water. He deferred a decision on the enforcement of the provisions of SMCRA section 720 during the period from October 24, 1992 (the effective date of SMCRA section 720) to July 16, 1994 (the effective date of Kentucky's House Bill 338 which provides for water replacement). Kentucky has stated that the effective date of the program amendment, when approved, will be July 16, 1994. Kentucky also stated that it does not have authority to issue enforcement actions for water loss caused by underground mining operations conducted after October 24, 1992, and before July 16, 1994.

Kentucky has investigated 115 citizen complaints alleging water supply loss or contaminations as a result of underground mining operations conducted after October 14, 1992, and before July 16, 1994. Of the 115 citizens' complaints, 30 are pending resolution of currently outstanding ten-day notices; 29 have been satisfactorily resolved; and 47 will require further investigation.

By letter dated June 2, 1995, Kentucky submitted additional clarifying information (Administrative Record No. KY–1358). Kentucky stated, in part:

KRS 350.421 was revised effective July 16, 1994, to place upon underground mining

operations the same obligation to replace affected water supplies that previously applied only to surface mining operations. The Kentucky provisions apply to water supplies for domestic, agricultural, industrial or other legitimate use from an underground or surface source, and thus are at least as broadly encompassing as the Federal requirements with regard to the types of supplies that must be replaced when affected by mining operations. For underground mining, the Kentucky after July 16, 1994, the effective date of the legislation. With regard to the level of replacement, we believe the affected party must be made whole, and that depends upon the factual circumstances of each case and, to some appropriated degree, the preferences of the affected party.

We recognize that it will be necessary to amend the approved Kentucky program by amending the cabinet's administrative regulations to be consistent with and as effective as the OSM regulations revised March 31, 1995. While it is difficult to establish a rigid timetable for adoption of amended administrative regulations, we believe the following target dates may be the earliest feasible dates for these actions, considering the length of Kentucky's promulgation process and considering that we also must continue development and promulgation of amendments to our regulations for impoundments and roads.

1. By August 15, 1995, submit to the Kentucky Legislative Research commission (LRC), a Notice of Intent to promulgate administrative regulations on water supply replacement and subsidence consistent with the March 31, 1995, OSM rules.

2. By December 15, 1995, file with LRC proposed amendments to administrative regulations.

On June 14, 1995, representatives from OSM's Lexington Field Office (LFO) and Kentucky's Department for Surface Mining Reclamation and Enforcement (DSMRE) met to discuss and finalize the implementation of the Energy Policy Act in Kentucky. A written record of the issues discussed was made (Administrative Record No. KY–1359). The following decisions were made. For repair or compensation of material damage, Kentucky's program has the equivalent provisions and enforcement authority. Therefore, DSMRE would enforce the State counterparts to 30 CFR 817.121(c)(2) while OSM would conduct normal oversight using the ten-day notice process if necessary. This enforcement approach was agreed to by the participants.

For water replacement, LFO as a result of the consultation with DSMRE, is recommending State and OSM Federal enforcement of 30 CFR 817.41(j). For the period October 24, 1992, through July 15, 1994, LFO will enforce EPACT water replacement provisions at 30 CFR 817.41(j) in Kentucky. After July 16, 1994, DSMRE has established both the authority to enforce and equivalent State provisions for water replacement resulting from damage caused by underground mining.

*Comments.* On April 7, 1995, OSM published in the **Federal Register** (60 FR 17741) an opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Kentucky. The comment period closed on May 8, 1995. Because OSM did not receive a request for one, OSM did not hold a public hearing. Following are summaries of all substantive comments that OSM received and OSM's responses to them

A mining association responded on May 12, 1995 (Administrative Record No. KY–1356). The party commented that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section I.B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. Specifically, the party commented that SMCRA contains various statutory procedures for the amendment, preemption, and substitution of Federal enforcement of State programs (sections 503, 505, and 521(b) that should be used in lieu of direct interim Federal enforcement.

In response to this comment, OSM's position remains as was stated in the March 31, 1995, preamble for the Federal regulations at 30 CFR 843.25, which in part implement section 720 of SMCRA:

> OSM has concluded that it is not clear from the legislation or legislative history, how Congress intended that section 720 was to be implemented, in light of existing SMCRA provisions for State primacy. Thus, OSM has a certain amount of flexibility in implementing section 720. After weighing these considerations, OSM intends to implement section 720 promptly, but will pursue Federal enforcement without undermining State primacy under SMCRA.

(60 FR 16722, 16743). Using this rationale, OSM concludes that there is not inconsistency in its implementation of section 720 of SMCRA with sections 503, 505, and 521(b) of SMCRA.

Further, the party commented that Congress' intent was that agreements between coal mine operators and landowners would be used to ensure that the protection standards of section 720 of SMCRA would occur rather than enforcement by State regulatory authorities and OSM. The party did not supply any legislative history to support this conclusion, and the plain language of section 720 of SMCRA does not support this conclusion.

Lastly, the party commented that the waiving of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertion. The following response to a similar comment in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745) also applies to this comment.

> [The commenter stated that] the proposal to provide for direct Federal enforcement ignores Federal case law which indicates that, as a general proposition, the State program, not SMCRA, is the law within the State. OSM recognizes that, under existing rules implementing SMCRA, States with approved regulatory programs have primary responsibility for implementing SMCRA, based on the approved program. However, in this rule, OSM has carved out a limited exception to the general proposition, to the extent necessary to give reasonable force and effect to section 720, while maintaining so far as possible State primacy procedures. OSM believes that the process adopted in this final rule is consistent with and authorized by Congress under the Energy Policy Act, and that case law interpreting other provisions of SMCRA is not necessarily dispositive.

A non-profit organization responded on May 8, 1995 (Administrative Record No. KY–1354), with several comments. Because of Kentucky's lack of statutory authority to mandate replacement of water supplies damaged by underground mining prior to July 16, 1994, the party feels OSM should initiate direct enforcement. The Director agrees. As discussed in the Director's Decision below, the Director has decided that OSM will enforce the provisions of 30 CFR 817.41(j) for the period from October 24, 1992, to July 16, 1994.

The party commented that Kentucky should be placed on an expedited schedule for submission of a State program amendment which incorporates emergency regulations for immediate implementation of the permitting requirements for water replacement and subsidence protection. The Director recognizes that Kentucky needs to amend its administrative regulations and accepts Kentucky's proposed schedule for the development and promulgation of amendments. As discussed in section I.C. above, by letter dated June 2, 1995, Kentucky proposes to amend its regulations to be consistent with the revised Federal regulations. By August 15, 1995, it plans to begin the promulgation process by submitting to its LRC a Notice of Intent to promulgate regulations on water supply replacement and subsidence.

The party also recommends that the implementation of the subsidence and water replacement rules should be an oversight topic (special study) for at least the first two years of implementation. The Director notes that OSM will continue to consider special studies of interest to its stakeholders as required by OSM's Directive REG–8 which establishes the procedures for conducting oversight. The State will be required to enforce the provisions of its approved program while OSM will conduct normal oversight using the ten-day notice process if necessary.

The party recommends that all citizen complaints relating to the water loss or subsidence provisions that are the subject of this notice be logged and tracked by OSM to assure proper implementation of the Energy Policy Act. The Director notes that the LFO has compiled a list of all water loss complaints received after October 24, 1992, and each complaint will be evaluated. Since Kentucky has equivalent provisions to the Federal subsidence regulations, the Director notes that State will enforce those provisions while OSM will conduct normal oversight using the ten-day notice process, if necessary.

The party feels that in those cases when the State has previously investigated a complaint, the ten-day notice process should not be used prior to Federal investigation and enforcement. The Director does not agree and reiterates his response to the comment above. For all subsidence-related complaints and for those water replacement-related complaints where damage occurred after July 16, 1994, OSM will conduct normal oversight using the ten-day notice process, if necessary.

The party's last comment concerned the permitting process. It recommends that pending submission of the State program amendment, if Kentucky does not modify the permitting process immediately through the use of existing language in the State program to require additional groundwater and subsidence information, OSM should demand that each permittee be required, prior to permit issuance, to develop groundwater and subsidence information for OSM's approval prior to permit issuance. Failing this, individual enforcement actions should be taken. The Director does not agree. Kentucky has jurisdiction over the regulation of its surface coal mining operations. Through the 30 CFR 732.17 process, the Director will notify Kentucky of required changes to its program.

*Director's decision.* Based on the information provided by Kentucky, discussions held with the State on June 14, 1995, and the comments discussed above, the Director has decided that the enforcement of the underground coal mine subsidence control and water replacement requirements in Kentucky will be accomplished by State and OSM enforcement—Option #4. Kentucky will enforce its provisions that correspond to the Federal regulations at 30 CFR 817.41(c)(2) pertaining to the repair or compensation of material damage resulting from subsidence. Kentucky has statutory provisions in place that correspond to the Federal regulations and has the authority to implement its provisions for all underground activities conducted after October 24, 1992. Kentucky will also enforce its provisions that correspond to the Federal regulations at 30 CFR 817.41(j) pertaining to water replacement for the period after July 16, 1994. It has statutory provisions in place that correspond to the Federal regulations and has the authority to implement its provisions for all underground mining activities conducted after July 16, 1994—the effective date of Kentucky's statutory provisions for water replacement. For those underground mining activities conducted after October 24, 1992, and before July 16, 1994, OSM will enforce the provisions of 30 CFR 817.41(j) because Kentucky does not have the statutory authority to retroactively apply water replacement requirements to water losses prior to the effective date of its statute.

If circumstances within Kentucky change significantly, the Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 24, 1995.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 95–18581 Filed 7–27–95; 8:45 am]

BILLING CODE 4310–05–M

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## 30 CFR Parts 920 and 938

## Maryland and Pennsylvania Regulatory Programs

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

**ACTION:** Notice of decision.

**SUMMARY:** OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Maryland and Pennsylvania. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: Promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures; and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Maryland and Pennsylvania and consideration of public comments, OSM has decided that initial enforcement in Maryland will be accomplished through the State enforcement and in Pennsylvania through State and OSM enforcement.

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

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Acting Director, Harrisburg Field Office, OSM, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

**SUPPLEMENTARY INFORMATION:**

### A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

### B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance

standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722).

30 CFR 817.121(c)(2) requires in part that:

The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

*Alternative OSM enforcement decisions.* 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 10, 1995, **Federal Register** (60 FR 18046) and as reiterated below, enforcement could be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart of 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.4(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce, in total or in part, the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of ''drinking, domestic or residential water supply,'' ''material damage,'' ''non-commercial building,'' ''occupied dwelling and structures related thereto,'' and ''replacement of water supply'' that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

### C. Enforcement in Maryland

*Maryland program activity, requirements, and enforcement.* By letter to Maryland dated December 13, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Maryland (Administrative Record No. MD–570.0). By letter dated March 29, 1995, Maryland responded to this request (Administrative Record No. MD–570.1).

Maryland stated that four underground coal mines were active in Maryland after October 24, 1992. Maryland indicated that existing State program provisions at Maryland Natural Resources Article 7, Subtitle 5A, § 7–5A–05.1, § 7–5a–05.2 and COMAR 08.20.13.09B, 08.20.13.09C are adequate State counterparts to section 720(a) of SMCRA and the implementing Federal regulations. Maryland explained that it will enforce these State program provisions in accordance with Maryland Natural Resources Article 7 effective October 24, 1992. Maryland has investigated eight citizen complaints alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. To date, Maryland has made determinations that the single structural damage complaint was unrelated to subsidence and that two water supply complaints were not impacted by the mining operations. In the five other water supply complaints Maryland determined the water supplies were impacted by underground mining and the mining company satisfactorily replaced these supplies.

*Comments.* On April 10, 1995, OSM published in the **Federal Register** (60 FR 18046) an opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Maryland. The comment period closed on May 10, 1995. Because OSM did not receive a request for one, OSM did not hold a public hearing. Following are summaries of all substantive comments that OSM received, and OSM's responses to them.

A mining association responded on May 12, 1995 (Administrative Record No. MD–571.01). The party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (Items (3) and (4) in section I.B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. The party also commented that the waiving of ten-day notice procedures under direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745). These concerns about direct Federal enforcement are moot issues in Maryland because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

A mine operator responded on May 8, 1995 (Administrative Record No. MD–571.03). The party commented that the water replacement and subsidence repair provisions that are the subject of this notice are already in effect in Maryland. The Director agrees.

*Director's Decision.* Based on the information provided by Maryland and the comments discussed above, the Director has decided that enforcement of the underground coal mine subsidence control and water replacement requirements in Maryland will be accomplished by State enforcement—option #2. Maryland has provisions at sections 7–5A–05.1 and 7–5A–05.2 of its statutes and sections 08.20.13.09 B and C of its regulations in place that correspond to all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2). Maryland also has the authority to implement its provisions for all underground mining activities conducted after October 24, 1992.

If circumstances within Maryland change significantly, the Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

**D. Enforcement in Pennsylvania**

*Pennsylvania program activity, requirements, and enforcement.* By letter to Pennsylvania dated December 13, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Pennsylvania (Administrative Record No. PA–835.00). By letter dated January 24, 1995, Pennsylvania responded to this request (Administrative Record No. PA–835.01).

Pennsylvania stated that 120 bituminous underground coal mines are permitted and that 60 of these are currently producing coal. In the anthracite field, there are approximately 115 permitted underground mining operations of which 50 to 75 operations are currently producing coal. Pennsylvania stated that Act 54, amending the Pennsylvania Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) became effective on August 21, 1994. This amendment to BMSLCA does address water supply replacement and subsidence damage repair or compensation, but certain provisions do not mirror the Federal Energy Policy Act of 1992 portions establishing section 720 of SMCRA.

Specifically, Pennsylvania stated in the January 24, 1995, response that BMSLCA does not include water replacement and repair of subsidence damage in the following situations.

Water Supply Replacement

- Cases where water supplies were impacted between October 24, 1992, and August 21, 1994.
- Cases where affected water supplies are located in the anthracite coalfields.
- Cases where landowners entered voluntary agreements allowing their supplies to be impacted.
- Cases where impacts occurred more than three years after completion of coal extraction.
- Cases where affected water sources are used to supply agricultural irrigation systems constructed after August 20, 1994.
- Cases where the property owner failed to report the water supply problem within two years of its occurrence.
- Cases where the mine operator was denied access to conduct a pre-mining or post-mining survey of the water supply and no pre-mining quality and quantity information is available.
- Cases where a mine operator purchased the property or compensated the property owner rather than replace the supply.

Repair or Compensate for Subsidence Damage

- Cases where dwellings were constructed after April 27, 1966, and damaged prior to August 21, 1994.
- Cases where dwellings constructed after August 21, 1994, are damaged prior to the time when coverage commences under BMSLCA (dwellings which are built after August 21, 1994, and between permitting actions are not covered by repair compensation requirements until the next permit renewal).
- Cases where the mine operator was denied access to conduct a pre-mining or post-mining survey of the damaged structure.
- Cases involving noncommercial buildings where the damaged buildings were not used by the public, accessible to the public, or used for certain agriculture purposes.

The Pennsylvania Department of Environmental Resources (PADER) states that it has authority to investigate complaints of structural damage and water loss caused by underground mining operations conducted after October 24, 1992. Pennsylvania, as discussed above, has authority to provide repair or compensation for subsidence related structural damage and water supply replacement for bituminous coalfield residents after August 21, 1994. Pennsylvania does not have the authority to fully implement section 720(a), in the anthracite coalfield or for bituminous coalfield for the time period October 24, 1992, through August 21, 1994. Pennsylvania will require at least one year to make the necessary statutory changes.

Pennsylvania has investigated 91 citizen complaints alleging subsidence-related structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. To date, Pennsylvania has completed review and made a final determination on 87 with 4 pending further study.

PADER has determined that 2 complaints regarding structural damage were unrelated to underground mining and the remaining 19 were the result of subsidence due to mining conducted after October 24, 1992. PADER reports that investigations of 70 water supply complaints resulted in finding that 60 were unrelated to underground mining conducted after October 24, 1992 and 6 water supplies were determined to have been affected by mining. Four water supply complaints are currently under review with no determination as to impacts from underground mining.

By letter dated May 4, 1995 (Administrative Record No. PA–835.11), Pennsylvania expressed its intention to implement as much of the Federal regulations as possible, to the extent of its law. It agreed to investigate all subsidence-related complaints and take remedial action and will defer to OSM in those situations where the Federal rules provide greater relief for the complainant. Program changes will be made, as necessary, through the program amendment process.

*Comments.* On April 10, 1995, OSM published in the **Federal Register** (60 FR 18046) an opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Pennsylvania. The comment period closed on May 10, 1995. Because Pennsylvania did not receive a request for one, OSM did not hold a public hearing. Following are summaries of all substantive comments that OSM received, and OSM's responses to them. Although 12 commenters responded, only 4 specifically addressed the implementation options as requested in the **Federal Register** Notice. The others addressed general provisions of Pennsylvania's regulatory program or Pennsylvania Act 54 implementation or wrote to endorse the position of the industry organization who responded on May 5, 1995.

A mining organization responded on May 12, 1995 (Administrative Record No. PA–835.16). The party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (Items (3) and (4) in section I.B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. Specifically, the party commented that SMCRA contains various statutory procedures for the amendment, preemption, and substitution of Federal enforcement of State programs (sections 503, 505, and 521(b)) that should be used in lieu of direct interim Federal enforcement.

In response to this comment, OSM's position remains as was stated in the March 31, 1995, preamble for the Federal regulations at 30 CFR 843.25 which in part implement section 720 of SMCRA:

> OSM has concluded that it is not clear from the legislation or legislative history, how Congress intended that section 720 was to be implemented, in light of existing SMCRA provisions for State primacy. Thus, OSM has a certain amount of flexibility in implementing section 720. After weighing these considerations, OSM intends to implement section 720 promptly, but will pursue Federal enforcement without undermining State primacy under SMCRA.

(60 FR 16722, 16743). Using this rationale, OSM concludes that there is no inconsistency in its implementation of section 720 of SMCRA with sections 503, 505, and 521(b) of SMCRA.

Further, the party commented that Congress' intent was that agreements between coal mine operators and landowners would be used to ensure that the protective standards of section 720 of SMCRA would occur rather than enforcement by State regulatory authorities and OSM. The party did not supply any legislative history to support this conclusion, and the plain language of section 720 of SMCRA does not support this conclusion.

Lastly, the party commented that the waiving of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertion. The following response to a similar comment in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745) also applies to this comment.

> [The commenter stated that] the proposal to provide for direct Federal enforcement ignores Federal case law which indicates that, as a general proposition, the State program, not SMCRA, is the law within the State. OSM recognizes that, under existing rules implementing SMCRA, States with approved regularly programs have primary responsibility for implementing SMCRA, based on the approved program. However, in this rule, OSM has carved out a limited exception to the general proposition, to the extent necessary to give reasonable force and effect to section 720, while maintaining so far as possible State primacy procedures. OSM believes that the process adopted in this final rule is consistent with and authorized by Congress under the Energy Policy Act, and that case law interpreting other provisions of SMCRA is not necessarily dispositive.

A second industry organization responded on May 5, 1995 (Administrative Record No. PA–835.13). The party recommended that OSM pursue enforcement through the State program amendment process. The Director does not agree for the following reasons: (a) although Pennsylvania's regulatory program provides similar protections to those afforded by 30 CFR 817.41(j) and 817.121(c)(2), it does not have comparable provisions to all of the Federal requirements and Pennsylvania will require one year or more to make the necessary changes through the amendment process, (b) the number of underground coal operations is not low, and (c) the number of complaints pertaining to section 720 of SMCRA is now low. The Director also notes that the party states that ''for all practical purposes, the Pennsylvania program is already as effective as section 720 and OSM's implementing regulations.'' However, Pennsylvania has itself acknowledged that it Act 54 lacks water replacement and subsidence provisions contained in SMCRA and the accompanying Federal regulations (60 FR 18048). The party also contends that complaints or reports of violations do not indicate a chronic or pervasive problem requiring direct Federal enforcement or interim enforcement and concludes that the State program amendment process is the best enforcement option for Pennsylvania. The Director notes that although the State performed initial investigations of 32 water supply and structural damage complaints, the absence of additional program provisions prevented additional State action to ensure compliance with all provisions of the Federal regulations. For the reasons specified in the Director's Decision below, the Director has decided that enforcement in Pennsylvania will be best accomplished through joint OSM and State enforcement. As noted above, however, the State will investigate all subsidence related complaints and take remedial action. The State will only refer to OSM in those situations where the Federal provisions provide greater relief for the complainant.

A citizens' group responded on May 8, 1995 (Administrative Record No. PA–835.03). The party's comments were divided into two sections: (1) changes it believes are necessary to make the Pennsylvania program as effective as the Federal rules, and (2) interim enforcement. The Director notes that the comments presented in the first section pertain to alleged deficiencies in Pennsylvania Act 54. The majority of the comments in section two pertains more directly to the implementation options presented in the **Federal Register** Notice. The party states that Pennsylvania cannot qualify for options one or two. It believes OSM has a responsibility to see that all complaints in the ''gap'' period are investigated. The party also commented that full compensation be made to homeowners by the permittee regardless of any prior agreements between homeowners and operators. The party recommended that when OSM begins direct enforcement, it should handle all cases of water loss and subsidence damage dealing with occupied dwellings and structures. Pennsylvania should handle those provisions not addressed by the Federal

regulations. The Director agrees, in part, with the comments presented above. As explained in the Director's Decision below, the Director notes that OSM will directly enforce those provisions of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) for which the State does not have comparable provisions and/or the authority to enforce. Specifically, for those underground mining activities conducted between October 24, 1992, and August 21, 1994. The State will enforce its provisions for which it has authority. Specifically, for those underground mining activities conducted after August 21, 1994.

A citizens' group responded on May 10, 1995 (Administrative Record No. PA–835.04). The party commented that a strict timeframe should be established for submission of a State program amendment which incorporates all the provisions of the Energy Policy Act. The Director recognizes that Pennsylvania may need to amend its program. As discussed above, by letter dated May 4,1 995, Pennsylvania intends to utilize the State program amendment process to make its program no less effective than the Federal regulations. The Director finds the 732 State program amendment process adequate to address potential deficiencies in the State program. The Director also notes that OSM will support the State's program by enforcing the provisions of the Energy Policy Act of 1992 for which the Pennsylvania program lacks counterparts. The party also recommends that the implementation of the subsidence and water replacement rules be an oversight (special fund) for at least the first two years of implementation. The Director notes that OSM will continue to consider special studies of interest to its stakeholders as required by OSM's Director REG–8 which establishes the procedures for conducting oversight. The State will be required to enforce the provisions of its approved program while OSM will conduct oversight using the ten-day notice process, if necessary.

The party recommends that all citizen complaints relating to water loss or subsidence that are the subject of this notice be logged and tracked by OSM to assure proper implementation of the Energy Policy Act. For those complaints previously investigated by the State, the party feels the ten-day notice procedure should not be used. The Director notes the OSM's Harrisburg Field Office has compiled a list of all complaints received after October 24, 1992, and each will be evaluated. For those complaints where damage occurred after August 21, 1994, OSM will conduct normal oversight using the ten-day notice process, if necessary.

The party's last comment concerns the permitting process. It recommends that pending submission of a State program amendment, if Pennsylvania does not modify the permitting process immediately through the use of existing language in the State program to require additional groundwater and subsidence information, OSM should demand that each permittee be required, prior to permit issuance, to develop groundwater and subsidence information for OSM's approval prior to permit issuance. Failing this, individual enforcement actions should be taken. The Director does not agree. Pennsylvania has jurisdiction over the regulation of its surface coal mining operations. Through the 30 CFR 732.17 program amendment process, the Director will notify Pennsylvania of required changes to its program.

*Director's Decision*. Based on the information provided by Pennsylvania, the comments discussed above, and two informal meetings with the State, the Director has decided that enforcement of the underground coal mine subsidence control and water replacement requirements in Pennsylvania will be accomplished through joint State and OSM enforcement—option #4. Pennsylvania has statutory and regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2). The State's authority to enforce its provisions applies to operations conducted after August 21, 1994, and it would enforce its provisions for these operations. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992.

If circumstances within Pennsylvania change significantly, the Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 24, 1995.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 95–18582 Filed 7–27–95; 8:45 am]

**BILLING CODE 4310–05–M**

## 30 CFR Part 946

## Virginia Regulatory Program

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

**ACTION:** Notice of decision.

**SUMMARY:** OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Virginia. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: Promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Virginia and consideration of public comments, OSM has decided that initial enforcement in Virginia will be accomplished through State enforcement.

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

**FOR FURTHER INFORMATION CONTACT:** Douglas E. Stone, Acting Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Drawer 1217, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

**SUPPLEMENTARY INFORMATION:**

### A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt placement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

**B. The Federal Regulations Implementing the Energy Policy Act**

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a)(1) and (2) of SMCRA (60 FR 16722).

30 CFR 817.112(c)(2) required in part that:

The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any noncommercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

The permittee must promotly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination of interruption.

*Alternative OSM enforcement decisions.* 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 7, 1995, **Federal Register** (60 FR 17743) and as reiterated below, enforcement could be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements.

(1) *State program amendment.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and strong underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been through and complete so as to assure prompt remedial action, then OSM will provide any to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement is statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation under without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of ''drinking, domestic or residential water supply,'' ''material damage,'' ''non-commercial building,'' ''occupied dwelling and structures related thereto,'' and ''replacement of water supply'' that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

**C. Enforcement in Virginia**

*Virginia program activity, requirements, and enforcement.* By letter to Virginia dated December 14, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Virginia (Administrative Record No. VA–850). By letter dated January 13, 1995, Virginia responded to this request (Administrative Record No. VA–851).

Virginia indicated that existing State program provisions at Sections 45.1–243 and 45.1–258 of the Code of Virginia are adequate State counterparts to section 720(a) of SMCRA. Virginia explained that it will enforce these State program provisions effective October 24, 1992. Virginia also provided a copy of DMLR memorandum 6–93 concerning intermediate guidelines for implementing the Virginia law until implementing Virginia regulations are approved. Section 480–03–19.817.121(c)(2) of the Virginia Coal Surface Mining Reclamation Regulations concerning subsidence control has been used by Virginia since December 26, 1990.

OSM records show that approximately 325 underground coal mines have been classified as active in Virginia since October 24, 1992. Between October 24, 1992, and January 13, 1995, Virginia investigated 262 citizen complaints alleging subsidence-caused structural damage or water supply loss or contamination as a result

of underground mining operations. As of January 13, 1995, Virginia found that a violation of the Act existed on 35 of the complaints, no violation of the Act existed on 202 of the complaints, and technical reports and a final decision were pending on 25 complaints.

On May 10, 1995 (Administrative Record Number VA–856), OSM met with the Virginia Division of Mined Land Reclamation (DMLR) to discuss implementation issues relative to the Energy Policy Act of 1992. At that meeting, OSM agreed with DMLR concerning the following interpretation of the Virginia program:

- Virginia has full statutory authority at section 43.1–258. of the Code of Virginia to require the replacement of drinking, domestic or residential water supplies contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992.
- Virginia has full authority at section 480–03–19.817.121(C)(2) of the Virginia Coal Surface Mining Reclamation Regulations to require the repair or compensation for damage to non-commercial buildings and dwellings and related structures resulting from subsidence caused by underground mining activities conducted after October 24, 1992.

*Comments.* On April 7, 1995, OSM published in the **Federal Register** (60 FR 17743) an opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Virginia. The comment period closed on May 8, 1995. Because OSM did not receive a request for one, OSM did not hold a public hearing. Following are summaries of all substantive comments that OSM received, and OSM's responses to them.

One commenter (Administrative Record Numbers VA–862) asserted that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section I.B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. The party also commented that the waiving of ten-day notice procedures under direct Federal enforcement is not consistent with Federal case law. A second commenter adopted these comments by reference. OSM does not agree with the commenter's assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745). These concerns about direct Federal enforcement are moot issues for Virginia because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

Another commenter stated that the Virginia program currently has adequate counterpart provisions in place and has proper authority to implement the requirements of the Energy Policy Act of 1992 in Virginia (Administrative Record Number VA–860). The party also stated that Virginia's investigations of subsidence related complaints has been designed to ensure prompt remedial action. These investigations, the commenter asserted, have been deemed fair by both the mining industry and the affected public. The commenter concluded that initial enforcement of the requirements of the Energy Policy Act of 1992 in Virginia is already being accomplished by the Virginia program.

One commenter requested ''interim direct OSM enforcement'' (Administrative Record Number VA–857). The commenter asserted that even though Virginia has statutory and regulatory provisions in place that are counterparts to the Energy Policy Act of 1992, Virginia provides inadequate protection for citizens residing in the coalfields. The commenter asserted that Virginia fails to attribute subsidence and water loss damages of any extent to underground coal mining operations. The commenter asserted that subsidence damages to the hydrologic regime and personal property (homes, ponds, outbuildings, etc.) are each looked at by the State as an isolated event rather than tied together to show the wide expanse of subsidence damage in Virginia. On March 10, 1995 this same commenter requested that OSM conduct a review of the Virginia program to verify similar allegations. That review is currently being conducted by OSM and it will address the commenter's allegations concerning the Virginia program.

*Director's decision.* Based on the information discussed above, the Director has decided that enforcement of the underground coal mine subsidence control and water replacement requirements in Virginia will be accomplished through State enforcement. The Director has made this decision after soliciting public comment and providing opportunity for public hearing (no requests for a hearing were received), and considering information provided by Virginia by letters dated January 13, 1995, and May 26, 1995, and in discussions held with Virginia on May 4, 1995. The Director has concluded that under the Code of Virginia section 41.1–258, the State has full authority to require the replacement of drinking, domestic or residential water supplies contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992. In addition, Virginia has full authority at section 480–03–19.817.121(c)(2) of the Virginia Coal Surface Mining Reclamation Regulations to require the repair or compensation for damage to non-commercial buildings and dwellings and related structures resulting from subsidence caused by underground mining activities conducted after October 24, 1992.

If circumstances within Virginia change significantly, the Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 24, 1995.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 95–18583 Filed 7–27–95; 8:45 am]

BILLING CODE 4310–05–M

## 30 CFR Part 948

## West Virginia Regulatory Program

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

**ACTION:** Notice of decision.

**SUMMARY:** OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in West Virginia. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: Promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with West Virginia and consideration of public comments, OSM has decided that initial enforcement in West Virginia will be accomplished through State enforcement.

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

**FOR FURTHER INFORMATION CONTACT:** James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street East, Charleston, West Virginia 25301–2816, Telephone: (304) 347–7158.

**SUPPLEMENTARY INFORMATION:**

## A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

## B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a)(1) and (2) of SMCRA (60 FR 16722).

30 CFR 817.121(c)(2) requires in part that:

> The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any noncommercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

> The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

*Alternative OSM enforcement decisions.* 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 11, 1995, **Federal Register** (60 FR 18381) and as reiterated below, enforcement could be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provision's effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to that State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of ''drinking, domestic or residential water supply,'' ''material damage,'' ''non-commercial buildings,'' ''occupied dwelling and structures related thereto,'' and ''replacement of water supply'' that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c)(2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

## C. Enforcement in West Virginia

*West Virginia program activity, requirements, and enforcement.* By letter to West Virginia dated December

16, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in West Virginia (Administrative Record No. WV 965). By letter dated January 11, 1995, West Virginia to this request (Administrative Record No. WV 966).

The West Virginia Division of Environmental Protection (WVDEP) notified OSM that there were approximately 650 active underground coal mines operating in West Virginia at the time. West Virginia stated that it believed the existing State program provisions are adequate to fully implement the letter and intent of section 720 of SMCRA. WVDEP further explained that its continued enforcement of its State program provisions at sections 22A–3–14(b)(1) and 22A–3–24(b) of the West Virginia Code and/or West Virginia Code of State Regulations (CSR) sections 38–2–14.5(h) and 38–2–16.2 would ensure compliance with section 720 of SMCRA.

West Virginia noted that section 22A–3–24(b) of the West Virginia Code allows for a waiver of water replacement rights by current landowners. According to WVDEP, this is part of a program amendment that is under review by OSM.

West Virginia also acknowledges that since WVDEP revised its rules on June 1, 1991, it has been requiring operators to either correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensate the owners of such structures or facilities in the full amount of the dimunition in value resulting from subsidence. In addition, West Virginia issued a policy directive on March 23, 1993, which provides that permits issued before June 1, 1991, and which have a waiver to subside without liability are exempt from the new requirements. Permits issued prior to June 1, 1991, without waivers and all permits issued after that date are required to comply with the revised regulations.

OSM estimates that West Virginia has investigated approximately 190 citizen complaints between June 1, 1991, and October 24, 1992, and approximately 330 citizen complaints after October 24, 1992, that allege subsidence-caused structural damage and/or water supply loss or contamination as a result of underground mining operations. To date, West Virginia has investigated these complaints and determined that the problems: (1) Were not caused by mining; (2) were caused by mining with resultant enforcement action/or corrective measures taken; or (3) are problems under continuing investigation to determine whether caused by mining.

Upon initial review of the West Virginia program, OSM was concerned that the State did not have adequate authority to fully enforce the provisions of the Energy Policy Act of 1992. Specifically, the State's March 31, 1993, policy, which provides that permits issued prior to June 1, 1991, that have waivers to subside without liability do not have to repair or compensate owners for material damage caused by subsidence, is inconsistent with the Energy Policy Act which requires repair or compensation for subsidence damage which occurs after October 24, 1992. In addition, West Virginia Code section 22A–3–24(b) and State regulations at CSR 38–2–14.5(h) authorize the waiver of water supply replacement.

On June 30, 1995 (Administrative Record Number WV–996), West Virginia revised its subsidence policy procedures to address these concerns. The revised procedures took effect on July 10, 1995. The revised policy requires owners of permits with waivers issued prior to June 1, 1991, to repair or compensate owners of residential dwellings for subsidence related damage. The new policy is retroactive, and makes all permits, regardless of issuance date, liable for subsidence damage caused by underground mining that occurred after October 24, 1992.

The West Virginia program currently contains the requirements of 30 CFR 817.41(j), pertaining to replacement of drinking, domestic or residential water supplies. However, in those cases where the owner has waived replacement of a water supply West Virginia's program does not require the permit applicant to demonstrate that an alternate water source is available which is equivalent in quality and quantity to the premining water supply, that the affected water supply was not needed for the land use in existence at the time the supply was affected, or that the affected water supply is not essential to achievement of the approved postmining land use. These demonstrations are all required as prerequisites to waiver of water replacement pursuant to the new Federal definition of ''replacement of water supply'' at 30 CFR 701.5. West Virginia has stated that its new policy with regard to water replacement and subsidence repair, effective July 10, 1995, is intended to address the requirements of the Energy Policy Act of 1992 and the accompanying Federal regulations, published on March 31, 1995. 60 FR 16722. With the exception of the water replacement waiver criteria, the West Virginia program and accompanying policy document do contain the necessary counterparts to 30 CFR 817.41(j) to allow for state enforcement of that provision. Further, the Director believes that the discrepancy between the Federal regulations and West Virginia's program with regard to water replacement waivers is of insufficient magnitude to warrant direct Federal enforcement of the water replacement requirement. The Director reaches his conclusion because he believes that few or no situations are likely to arise involving underground mining and waiver of water supply replacement where the approved postmining land use is residential. Therefore, the Director finds that state enforcement is the most reasonable option for West Virginia.

*Comments.* On April 11, 1995, OSM published in the **Federal Register** (60 FR 18381) an opportunity for a public hearing and request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in West Virginia. The comment period closed on May 11, 1995. OSM received one request to conduct a hearing. Although the party that requested the hearing subsequently withdrew that request, a public meeting was held on May 8, 1995, at the OSM Area Office, Logan, West Virginia (Administrative Record Number WV–977). No person attended to speak or discuss recommendations with OSM. One individual attended only as an observer to the activities. A summary of the meeting was entered into the administrative record (Administrative Record Number WV–977). OSM received three comments in response to its notice. Following are summaries of all the substantive comments that OSM received, and OSM's responses to them.

One party commented that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA (Administrative Record Number WV–994). The party also commented that the waiving of ten-day notice procedures under direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742–16745). These concerns about direct Federal enforcement are moot issues in West Virginia because the Regional Director has decided, as set forth below, not to implement an

enforcement alternative including direct Federal enforcement.

Another organization commented that West Virginia has immediate authority to implement the provisions of the Energy Policy Act of 1992 to protect water and homes from damage from underground mining (Administrative Record Number WV–978). To get prompt, strict enforcement of the provisions of the Energy Policy Act the commenter recommended that OSM log and track all water loss and subsidence complaints and independently assess the State's conclusions. The State and OMS have agreed to set up a joint team to review all the complaints relating to subsidence and water loss filed between October 24, 1992, through July 10, 1995, the date of the new State subsidence procedures discussed above. However, since West Virginia has equivalent provisions to the Federal subsidence regulations (with the subsidence procedures policy of July 10, 1995) it is the State's responsibility to enforce those provisions. OSM will conduct normal oversight of the West Virginia program for the period following July 10, 1995, using the ten-day notice process if necessary.

The commenter also made additional recommendations. The Regional Director notes, however, the subject of the comments (baseline groundwater well sampling, presubsidence survey requirements at 30 CFR 784.20, and timeframes for submitting State amendments to fully address such other requirements) are outside the scope of this notice.

A third organization commented that although West Virginia has statutory and regulatory provisions in place that correspond in some ways to the requirements of the Federal law, OSM should select joint State and OSM initial enforcement of the provisions of the Energy Policy Act of 1992 that the State has not yet fully addressed (Administrative Record Number WV–981). The commenter specifically noted that the West Virginia program currently allows the waiver of water replacement rights by current landowners, and that it is unclear whether the State means to apply the requirements of the Energy Policy Act only to ''permits'' issued on or after October 24, 1992, or to all portions of operations conducted after October 24, 1992. The Regional Director notes, and as discussed above, the State has implemented on July 10, 1995, new subsidence policy procedures that address the commenter's concerns. According to the new State subsidence procedures, all permits, regardless of issuance date, are liable for subsidence damage caused by underground mining that occurred after October 24, 1992. As for the waiver language at West Virginia Code section 22A–3–24(b) and the State regulations at CSR 38–2–14.5(h) concerning the waiver of water supply replacement, the Regional Director notes that the West Virginia program contains the requirements of 30 CFR 817.41(j) concerning drinking, domestic or residential water supply. The Regional Director notes that the State and OSM will jointly review all the complaints that were filed between October 24, 1992, and July 10, 1995, to ensure that the State's past enforcement actions complied with the requirements of the Energy Policy Act of 1992. If a complaint was filed that meets the criteria of the Energy Policy Act of 1992. If a complaint was filed that meets the criteria discussed above, State officials will take enforcement action to require the company to comply with the new policy.

The commenter also provided comments regarding proof of damage through presubsidence surveys and baseline monitoring and delays in program implementation. Those concerns are outside the scope of this document, but will be addressed at a later date.

*Director's decision*. Based on the information provided by West Virginia, discussions held with the State on July 13, 1995, and the comments discussed above, the Regional Director has decided that enforcement of the underground coal mine subsidence control and water replacement requirements in West Virginia will be accomplished through State enforcement.

OSM's initial concern that the West Virginia program does not have adequate authority to enforce the provisions of the Energy Policy Act of 1992 has been addressed by the State. On July 10, 1995, West Virginia implemented new State subsidence policy procedures that require repair or compensation for subsidence damage after October 24, 1992, consistent with 30 CFR 817.121(c)(2), and the approved program requires replacement of water supplies consistent with 30 CFR 817.41(j). In addition, OSM and the State will jointly review all the complaints filed between October 24, 1992, through July 10, 1995, to ensure that the State's past actions with regard to these complaints are consistent with the Energy Policy Act of 1992.

If circumstances within West Virginia change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by notice in the **Federal Register**.

Dated: July 24, 1995.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 95–18584 Filed 7–27–95; 8:45 am]

**BILLING CODE 4310–05–M**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[TN131–1–6794a; TN136–1–6795a; TN137–1–6796a; FRL–5257–5]**

### Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Basic Motor Vehicle Inspection and Maintenance Program

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving three state implementation plan (SIP) revisions submitted on March 17, July 8 and July 13, 1994, by the State of Tennessee, through the Tennessee Air Pollution Control Division. The revisions submitted March 17, 1994, modify the existing basic motor vehicle inspection and maintenance (I/M) program in Davidson County to meet the requirements of the EPA I/M regulations, as published on November 5, 1992. The revisions submitted on July 8 and July 13, 1994, establish and require the implementation of a basic I/M program in the four middle Tennessee counties of Rutherford, Sumner, Williamson, and Wilson. These counties, along with Davidson County, form the Nashville ozone nonattainment area. The regulations establishing the I/M program constituted the July 8, 1994, submittal while the nonregulatory components of the program were discussed in the July 13, 1994, submittal.

**DATES:** This final rule will be effective September 26, 1995 unless adverse or critical comments are received by August 28, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments on this action should be addressed to Dale Aspy at the EPA Regional office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket), U.S.

Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.
Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.
Air Pollution Control Division, Tennessee Department of Environment and Conversation, 9th Floor, L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.
Bureau of Environmental Health Services, Nashville and Davidson County Metropolitan Health Department, 311 23rd Street, North, Nashville, Tennessee 37203.

**FOR FURTHER INFORMATION CONTACT:** Dale Aspy, Mobile Source Planning Unit, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4214. Reference files TN131, TN136 and TN137.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Clean Air Act as amended in 1990 (the Act) requires that most ozone nonattainment areas adopt either ''basic'' or ''enhanced'' I/M programs, depending on the severity of the problem and the population of the area. The moderate ozone nonattainment areas, plus marginal ozone areas with existing or previously required I/M programs, fall under the ''basic'' I/M requirements. Enhanced programs are required in serious, severe, and extreme ozone nonattainment areas with 1980 urbanized populations of 200,000 or more.

The Act requires states to make changes to improve existing I/M programs or to implement new ones for certain nonattainment areas. Section 182(a)(2)(B) of the Act directed EPA to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The Act further requires each area required to have an I/M program to incorporate this guidance into the SIP. Based on these requirements, EPA promulgated I/M regulations on November 5, 1992 (57 FR 52950, codified at 40 Code of Federal Regulations (CFR) 51.350–51.373).

The I/M regulation establishes minimum performance standards for basic I/M programs as well as requirements for the following: network type and program evaluation; adequate tools and resources; test frequency and convenience; vehicle coverage; test procedures and standards; test equipment; quality control; waivers and compliance via diagnostic inspection; motorist compliance enforcement; motorist compliance enforcement program oversight; quality assurance; enforcement against contractors, stations and inspectors; data collection; data analysis and reporting; inspector training and licensing or certification; public information and consumer protection; improving repair effectiveness; compliance with recall notices; on-road testing; SIP revisions; and implementation deadlines. The performance standard for basic I/M programs remains the same as it has been since initial I/M policy was established in 1978, pursuant to the 1977 amendments to the Clean Air Act.

The State of Tennessee contains the Nashville urbanized area which is designated as moderate nonattainment for ozone. Section 51.372(b)(2) of the federal I/M regulation (codified at 40 CFR Part 51.372(b)(2)) required affected states to submit full I/M SIP revisions that met the requirements of the Act to EPA by November 15, 1993.

On March 17, 1994, the Davidson County Health Department, through the Tennessee Air Pollution Control Division (APCD), submitted a SIP revision addressing required changes to the existing I/M program in Davidson County. The major changes made to the Davidson County I/M program were the elimination of the exemption for vehicles over 12 model years old and the addition of a three point anti-tampering program. The proposed amendments will include a visual check for catalytic converters, gasoline fuel inlet restrictors and fuel filler caps, and the requirement that all vehicles manufactured in model year 1975 or newer be tested as a condition of renewing registration.

On July 8 and July 13, 1994, the State of Tennessee, through the Tennessee APCD, submitted to EPA SIP revisions for a basic I/M program for the four counties surrounding Davidson County. The counties of Rutherford, Sumner, Williamson, and Wilson constitute the remainder of the Nashville ozone nonattainment area. An I/M program was required to be implemented in the urbanized area, which includes a portion of these counties by the I/M applicability requirements which were revised in 40 CFR Part 51.350 on November 5, 1992. The first submittal was for the purpose of adding Chapter 1200–3–29, Light Duty Motor Vehicle Inspection and Maintenance, of the Tennessee Air Regulation to the Tennessee SIP. The second submission was made to add all required nonregulatory elements of the I/M program to the SIP. The I/M regulations were approved by the Tennessee Air Pollution Board on September 8, 1993, and became state effective on June 29, 1994. Mandatory vehicle testing in the four counties of Rutherford, Sumner, Williamson, and Wilson began on December 1, 1994. EPA summarizes the requirements of the federal I/M regulations as found in 40 CFR Part 51.350–51.373 and its analysis of the state submittal below. Parties desiring additional details on the federal I/M regulation are referred to the November 5, 1992, **Federal Register** notice (57 FR 52950) or 40 CFR Part 51.350–51.373.

## II. EPA's Analysis of Middle Tennessee Basic I/M Program

As discussed above, section 182(a)(2)(B) of the Act requires that states adopt and implement updated regulations for I/M programs in moderate and above ozone nonattainment areas. The following sections of this notice summarize the requirements of the federal I/M regulations and address whether the elements of the State's submittal comply with the federal rule.

*Applicability—40 CFR 51.350*

Section 182(b)(4) of the Act and 40 CFR 51.350(a)(4) require that any area classified as moderate ozone nonattainment and not required to implement enhanced I/M under 40 CFR 51.350(a)(1) shall implement basic I/M in the 1990 Census-defined urbanized nonattainment area. The urbanized portion of the Nashville nonattainment area contains Davidson County, and sections of Rutherford County, Sumner County, Williamson County, and Wilson County. Davidson County has operated an I/M program since 1985 and submitted on March 17, 1994, through the Tennessee APCD, the required revisions to that program. An analysis of the urbanized area utilizing the revised provisions of this section, identified the need to expand the current, Davidson County only program, to include the remainder of the nonattainment area. The program boundaries described in the Tennessee submittal meet the federal I/M requirements under section 51.350 and are approvable.

The federal I/M regulation requires that the state program shall not lapse prior to the time it is no longer needed. EPA believes that a program that does not lapse prior to the attainment deadline for each applicable area would meet this requirement. The attainment

date for the Nashville ozone nonattainment area is November 15, 1996, and the I/M regulations contained in the Tennessee submittal does not establish an I/M program implementation sunset date prior to the attainment deadline.

*Basic I/M Performance Standard—40 CFR 51.352*

The basic I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. The performance standard shall be established using local characteristics, such as vehicle mix and local fuel controls, and the following model I/M program parameters: network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emission control device, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. At the time of the Tennessee submittal the most current version was MOBILE5a. Areas shall meet or exceed the performance standard for the pollutants which cause them to be subject to basic I/M requirements. In the case of ozone nonattainment areas, the performance standard must be met for both $NO_X$ and VOCs.

The Tennessee submittal for the Davidson County I/M program includes the following program design parameters:

network type—centralized, test-only
start date—1985
test frequency—annual
model year coverage—1975 and later
vehicle type coverage—light gasoline powered vehicles
emission test—Idle
emission standards—1.2% CO, 220 ppm HC
emission control device—Catalytic converter, gas cap, fuel inlet restrictor
stringency (pre-1981 failure rate)—20%
waiver rate (pre-81/81 and newer)—0%/0%
compliance rate—98%
evaluation date(s)—January 1, 1997

The Tennessee submittal for the four additional counties includes the following program design parameters:

network type—centralized, test-only
start date—1995
test frequency—annual
model year coverage—1975 and later
vehicle type coverage—light gasoline powered vehicles
emission test—Idle
emission standards—1.2% CO, 220 ppm HC
emission control device—Catalytic converter, gas cap, fuel inlet restrictor
stringency (pre-1981 failure rate)—20%
waiver rate (pre-81/81 and newer)—0%/0%
compliance rate—98%
evaluation date(s)—January 1, 1997

The Tennessee program design parameters meet the federal I/M regulations and are approvable.

The emission levels achieved by these programs were modeled using MOBILE5a. The modeling demonstration was performed correctly, used local characteristics and demonstrated that the program design will exceed the minimum basic I/M performance standard, expressed in gpm, for VOCs and $NO_X$ for each milestone and for the attainment deadline. The modeling demonstration is approvable.

*Network Type and Program Evaluation—40 CFR 51.353*

Basic I/M programs can be operated in a centralized test-only format, in a decentralized test and repair, or in any hybrid version as long as the state can demonstrate that the selected program is effective in achieving the basic I/M performance standard. The Tennessee APCD will administer a centralized I/M program in the four counties previously identified while the Davidson County Health Department will continue to administer the centralized I/M program in that county. The enhanced program evaluation requirements of this section do not pertain to the Tennessee program as it is a basic I/M program. The network type is approvable.

*Adequate Tools and Resources—40 CFR 51.354*

The federal regulation requires the state to demonstrate that adequate funding of the program is available. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund and used to finance the program. Alternative funding approaches are acceptable if demonstrated that the funding can be maintained. Reliance on funding from the state or local General Fund is not acceptable unless doing otherwise would be a violation of the state's constitution. The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP shall also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

The Tennessee program is to be funded by direct reimbursement of the primary contractor from vehicle inspection fees. A portion of the vehicle inspection fee will be returned to APCD to cover the cost of program oversight and will be sufficient to cover the program related activities. This method meets the federal regulation and is approvable. The submittal demonstrates that sufficient funds, equipment and personnel have been appropriated to meet program operation requirements. The Tennessee submittal meets the adequate tools and resources requirements set forth in the federal I/M regulations.

*Test Frequency and Convenience—40 CFR 51.355*

The SIP shall describe the test year selection scheme, how the test frequency is integrated into the enforcement process and shall include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program shall be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

The Tennessee and Davidson County I/M regulations provide for an annual test frequency for all covered vehicles. A vehicle is assigned a registration month. The vehicle owner must present a valid, passing, emission certificate in order to renew the registration of the vehicle. The emission certificate is valid for 90 days after the test. The program contractor notifies the vehicle owner when their vehicles may be tested. The program also defines acceptable wait times in the contract. Waiting times shall not exceed a daily average of 15 minutes for more than five consecutive days. If this time is exceeded, the state can require additional lanes to be opened. The submittal meets the requirements for testing frequency and convenience.

*Vehicle Coverage—40 CFR 51.356*

The performance standard for basic I/M programs assumes coverage of all 1968 and later model year light duty vehicles (LDV) and light duty trucks (LDT) up to 8,500 pounds gross vehicle weight rating (GVWR), and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered or required to be registered within the I/M program area boundaries and fleets primarily operated within the I/M program area boundaries and

belonging to the covered model years and vehicle classes comprise the subject vehicles. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in independent, test-only facilities, according to the requirements of 40 CFR Part 51.353(a). Vehicles which are operated on federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in the state or local I/M area.

The federal I/M regulation requires that the SIP shall include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement, a detailed description of the number and types of vehicles to be covered by the program and a plan for how those vehicles are to be identified including vehicles that are routinely operated in the area but may not be registered in the area, and a description of any special exemptions including the percentage and number of vehicles to be impacted by the exemption.

The Davidson County and Tennessee I/M regulations require all 1975 and newer model year gasoline powered vehicles up to 8,500 pounds gross vehicle weight registered in Davidson, Rutherford, Sumner, Williamson, and Wilson Counties except motorcycles, and vehicles which the APCD Administrator has determined shall not be tested because of fuel or engine characteristics, to be tested annually. This includes light duty vehicles and light duty trucks up to 8,500 pounds gross vehicle weight rating. The SIP submittals contain a listing of the number of subject vehicles in each county. Quality control requirements apply equally to both the centralized testing stations and the fleet self testers. Federally owned vehicles are subject to the testing requirements. Vehicles from other areas may be tested. Owners of subject vehicles that will be outside of the test area during the assigned test period may request an extension. However, they must submit the vehicle for an emission test upon return to the area.

The State's plan for testing fleet vehicles is acceptable and meets the requirements of the federal I/M regulation.

*Test Procedures and Standards—40 CFR 51.357*

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR Part 51.357 and in the EPA document entitled ''Recommended I/M Short Test Procedures For the 1990's: Six Alternatives.''

The Tennessee I/M submittals include a description of the test procedure used in the Tennessee I/M program. The program contract requires an idle test procedure to be utilized. This procedure is an EPA short test procedure. A vehicle failing the initial test is preconditioned at 2500 revolutions per minute for about 25–30 seconds and retested at idle. These test procedures conform to EPA approved test procedures and are approvable. The State I/M regulation establishes hydrocarbon (HC) and carbon monoxide (CO) pass/fail exhaust standards for all test procedures for each applicable model year and vehicle type. The exhaust standards adopted by the state conform to EPA established standards and are approvable.

*Test Equipment—40 CFR 51.358*

Computerized test systems are required for performing any measurement on subject vehicles. The federal I/M regulation requires that the state SIP submittal include written technical specifications for all test equipment used in the program. The specifications shall describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The Davidson County and Tennessee I/M contracts require exhaust analyzers that meet the BAR90 performance specifications. These specifications require the use of computerized test systems. The specifications also include performance features and functional characteristics of the computerized test systems which meet the federal I/M regulations and are approvable.

*Quality Control—40 CFR 51.359*

Quality control measures shall insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

Section 8 of the contract and section 8 of the Tennessee APCD portion of the SIP submittal discuss quality control and assurance. The Davidson County contract also discusses these items. These portions of the submittal include the quality control requirements for the emission measurement equipment, record keeping requirements and measures to maintain the security of all documents used to establish compliance with the inspection requirements. This portion of the Tennessee submittal complies with the quality control requirements set forth in the federal I/M regulation and is approvable.

*Waivers and Compliance Via Diagnostic Inspection—40 CFR 51.360*

The federal I/M regulation allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards.

The Davidson County and Tennessee regulations do not provide for waivers. These provisions meet the federal I/M regulations requirements and are approvable.

*Motorist Compliance Enforcement—40 CFR 51.361*

The federal regulation requires that compliance shall be ensured through the denial of motor vehicle registration in I/M programs. However, a basic area may use an alternative enforcement mechanism if it demonstrates that the alternative will be as effective as registration denial. The SIP shall provide information concerning the enforcement process, legal authority to implement and enforce the program, a commitment to a compliance rate to be used for modeling purposes and to be maintained in practice.

The Davidson County and Tennessee I/M regulations provide the legal authority to implement a registration denial enforcement mechanism. The County Clerk's office can not issue a registration renewal without a passing emission test. Section 9 of the Tennessee APCD SIP submittal and Appendix 1 of the Davidson County SIP submittal discuss penalties to vehicle owners not complying with the requirement. The Davidson County Health Department and APCD will conduct reviews in their respective program areas of the Clerk's office registration to insure the regulation is enforced. The SIP contains a commitment to maintain the modeled compliance rate in practice. This portion of the Tennessee submittal meets the federal requirements and is approvable.

*Motorist Compliance Enforcement Program Oversight—40 CFR 51.362*

The federal I/M regulation requires that the enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary. The SIP shall include quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system. An information management system shall be established which will characterize, evaluate and enforce the program.

The Davidson County and Tennessee I/M regulations provide the legal authority to implement a registration denial enforcement system. The Davidson County Health Department and Tennessee APCD will audit the County Clerk's Office to insure the regulation is enforced. This portion of the Tennessee submittal meets the federal requirements and is approvable.

*Quality Assurance—40 CFR 51.363*

An ongoing quality assurance program shall be implemented to discover, correct and prevent fraud, waste, and abuse in the program. The program shall include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all state I/M enforcement officials and auditors. A description of the quality assurance program which includes written procedure manuals on the above discussed items must be submitted as part of the SIP.

The Tennessee submittal includes a quality assurance program which describes details and procedures for implementing inspector, records, and equipment audits. Performance audits of inspectors and testing equipment will be performed by Davidson County Health Department and APCD personnel in their respective jurisdictions. Section 8 of the Tennessee APCD contract addresses quality assurance requirements. Section 8 of the Tennessee APCD SIP submittal addresses quality assurance procedures as well. Appendices 1 and 7 of the Davidson County submittal discuss these items as well. In both cases, overt and covert audits and remote observation of inspection personnel performing testing are included. Overt audits may be performed by Davidson County Health Department and APCD personnel at any time, unannounced, during station operation. Covert audits are required to use a range of vehicles which have been set to fail the inspection test. The quality assurance requirements and procedures in the Tennessee I/M program meet the federal I/M regulation requirements and are approvable.

*Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364*

Enforcement against licensed stations or contractors, and inspectors shall include swift, sure, effective, and consistent penalties for violation of program requirements. The federal I/M regulation requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP. State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits. An official opinion explaining any state constitutional impediments to immediate suspension authority must be included in the submittal. The SIP shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the resources and sources of those resources which will support this function.

The Tennessee submittal includes the legal authority to establish and impose penalties against stations, contractors and inspectors. Section 9 of the Tennessee APCD SIP submittal states that civil penalties of up to $25,000 per day can be imposed for violations. Appendix 4 of the Davidson County submittal discusses this issue in that county's program. In both programs, the program auditors also have the ability to immediately shut down any testing lane they find not to be in compliance. The testing lane will remain out of operation until the necessary corrective action has been taken and a followup audit confirms the lane is operating properly. Per contract agreements with the system contractor and the State of Tennessee, the contractor is required to comply with all applicable federal, state, and county regulations. The contractor has to post a performance bond to help insure program operations comply with all regulations. The Tennessee I/M enforcement program can suspend and/or revoke fleet inspection licenses for violations. Inspectors may be decertified. The Tennessee I/M program meets the requirements of this section and is approvable.

*Data Collection—40 CFR 51.365*

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR Part 51.359.

Section 10 of the Tennessee SIP submittal specifies the information contained on the inspection form. Appendix 4, the contract, of the Davidson County submittal, contains the specifications for equipment and data. The contract, in section 12 of the Tennessee APCD submittal, requires the contractor to work with Davidson County and the State in the development of the test forms and the associated data fields. Data requirements are also specified in the covert and overt audit section of the Procedures and Policies section of the SIP. The type of test data collected meets the federal I/M regulation requirements and is approvable. The submittal also commits to gather and report the results of the quality control checks required under 40 CFR Part 51.359 and is approvable.

*Data Analysis and Reporting—40 CFR 51.366*

Data analysis and reporting are required to allow for monitoring and evaluation of the program by the state and EPA. The federal I/M regulation requires annual reports to be submitted which provide information and statistics and summarize activities performed for each of the following programs: testing, quality assurance, quality control and enforcement. These reports are to be submitted by July and shall provide statistics for the period of January to December of the previous year. A biennial report shall be submitted to EPA which addresses changes in program design, regulations, legal authority, program procedures and any weaknesses in the program found during the two year period and how these problems will be or were corrected.

The Tennessee I/M program SIP provides for the analysis and reporting of data for the testing program, quality assurance program, quality control program and the enforcement program. The type of data to be analyzed and reported meets the federal I/M regulation requirements and is approvable. Tennessee commits to submit annual reports on these programs to EPA by July of the

subsequent year. These annual reports will be submitted July 1, 1996, and each July 1 thereafter, covering the previous test year. Biennial reports will be submitted to discuss any changes in program design and procedures, and the appropriate corrective action taken.

*Inspector Training and Licensing or Certification—40 CFR 51.376*

The federal I/M regulation requires all inspectors to be formally trained and licensed or certified to perform inspections.

Both the Tennessee regulations and the contract require all inspectors to receive formal training, be licensed by the Davidson County Health Department or the APCD and renew the certification every year. In order to be licensed, the inspector must attend a training course and pass an examination. Currently, policies are being drafted by the APCD to officially require a score of at least 80% to pass. The SIP meets the federal I/M regulation requirements for inspector training and certification and is approvable.

*Public Information and Consumer Protection—40 CFR 51.368*

The federal I/M regulation requires the SIP to include public information and consumer protection programs.

The contracts provided with both SIP submittals include a public information program which educates the public on I/M, State and federal regulations, air quality and the role of motor vehicles in the air pollution problem and other items as described in the federal rule. The consumer protection program includes provisions for a challenge mechanism, and providing assistance to motorists in obtaining warranty covered repairs. Section 11 of the Tennessee APCD SIP submittal and Appendices 10, 11, and 13 of the Davidson County submittal discusses the various components of the public information and consumer protection program that will be implemented as part of the I/M program. The public information and consumer protection programs contained in the SIP submittal meet the federal regulations and are approvable.

*Improving Repair Effectiveness—40 CFR 51.369*

Effective repairs are the key to achieving program goals. The federal regulation requires states to take steps to ensure that the capability exists in the repair industry to repair vehicles. The SIP must include a description of the technical assistance program to be implemented, and a description of the repair technician training resources available in the community.

Section 10 of the Tennessee APCD contract contains a provision identifying the State as being responsible for interfacing with the repair industry with respect to technical assistance and technician training. The repair effectiveness program described in the SIP meets the federal regulation and is approvable.

*Compliance With Recall Notices—40 CFR 51.370*

The federal regulation requires the states to establish methods to ensure that vehicles that are subject to enhanced I/M and are included in an emission related recall receive the required repairs prior to completing the emission test or renewing the vehicle registration.

The Nashville ozone nonattainment area is classified as moderate and therefore not subject to this provision.

*On-road Testing—40 CFR 51.371*

On-road testing is required in enhanced I/M areas.

The Nashville ozone nonattainment area is classified as moderate and therefore not subject to this provision.

*State Implementation Plan Submissions/Implementation Deadlines—40 CFR 51.372–373*

The federal regulation requires centralized basic I/M programs to be fully implemented by July 1, 1994. The Davidson County portion of the Nashville nonattainment area has been in operation since 1985. This constitutes the largest portion of the vehicles in the area. Testing began on December 1, 1994 in the four surrounding counties. Although this testing began several months late, the SIP revision is now approvable as the program has been implemented in the four additional counties as required.

On April 1, 1994, the State of Tennessee was notified by EPA of a failure to submit the I/M plan as required. This action started the sanctions clock and the Federal Implementation Plan (FIP) clocks. Letters were sent on July 18 and August 2, 1994, notifying the Tennessee APCD that the submitted middle Tennessee I/M SIP revisions had been determined to be complete. This action stopped the sanctions clock. The FIP clock will be stopped by the final approval of this SIP provision.

EPA's review of the material indicates that the State has adopted a basic I/M program in accordance with the requirements of the Act. EPA is approving the Tennessee SIP revision for revisions to the Davidson County I/M program, as submitted on March 17, 1994, and for a basic I/M program in Rutherford, Sumner, Williamson, and Wilson counties which was submitted on July 8 and July 13, 1994.

**Final Action**

The EPA is publishing this action without prior proposal because the agency views this as a noncontroversial amendment and anticipates no adverse public comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comment be filed. This action will be effective September 26, 1995 unless, by August 28, 1995, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be discussed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period for this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 26, 1995.

EPA is approving this revision to the Tennessee SIP for a basic I/M program. The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state

implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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

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

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any local or tribal governments have elected to adopt the program provided for under Section 182 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose any mandate upon the State, local, or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and Recordkeeping requirements.

Dated: June 28, 1995.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

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

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7671q.

### Subpart RR—Tennessee

2. Section 52.2220, is amended by adding paragraph (c)(126) to read as follows:

**§ 52.2220 Identification of plan.**

* * * * *

(c) * * *

(126) Modifications to the existing basic I/M program in Davidson County to implement an anti-tampering check, and to require testing of vehicles from model year 1975 and newer, submitted on March 17, 1994. Addition of a basic I/M program in the remainder of the middle Tennessee ozone nonattainment area, submitted on July 8, 1994.

(i) Incorporation by reference.

(a) Metropolitan Health Department Pollution Control Division Regulation 8, approved by the Tennessee Air Pollution Control Board on March 9, 1994.

(b) Regulation 1200–3–29, effective on September 8, 1993.

(ii) Other material. None.

3. Section 52.2235 is amended by adding paragraph (b) to read as follows:

**§ 52.2235 Control Strategy for Ozone.**

* * * * *

(b) Nonregulatory provisions for the implementation of a basic I/M program in Rutherford, Sumner, Williamson, and Wilson Counties, submitted on July 13, 1994, were approved by EPA on September 26, 1995.

[FR Doc. 95–18511 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 52

**[KY77–1–6553a; FRL–5257–8]**

## Approval and Promulgation of Air Quality Implementation Plans; Kentucky; Basic Motor Vehicle Inspection and Maintenance Program

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a state implementation plan (SIP) revision submitted on November 12, 1993, by the Commonwealth of Kentucky, through the Kentucky Natural Resources and Environmental Protection Cabinet. This revision modifies the implementation of a basic motor vehicle inspection and maintenance (I/M) program in Jefferson County, Kentucky, which will include commuter vehicles in the program.

**DATES:** This final rule will be effective September 26, 1995 unless adverse or critical comments are received by August 28, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments on this action should be addressed to Dale Aspy at the EPA Regional office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

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

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

Air Pollution Control District of Jefferson County 850 Barrett Avenue, Suite 205, Louisville, Kentucky 40204.

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 316 St. Clair Mall, Frankfort, Kentucky 40601.

**FOR FURTHER INFORMATION CONTACT:** Dale Aspy, Mobile Source Planning Unit, Regulatory Planning and Development Section, Air Programs Branch, Air,

Pesticides & Toxics Management Division, Environmental Protection Agency, Region IV, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4214. Reference file KY KY77–1–6553.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Clean Air Act as amended in 1990 (the Act) requires that most ozone nonattainment areas adopt either ''basic'' or ''enhanced'' I/M programs, depending on the severity of the problem and the population of the area. The moderate ozone nonattainment areas, plus marginal ozone areas with existing or previously required I/M programs, fall under the ''basic'' I/M requirements. Enhanced programs are required in serious, severe, and extreme ozone nonattainment areas with 1980 urbanized populations of 200,000 or more.

The Act requires states to make changes to improve existing I/M programs or to implement new ones for certain nonattainment areas. Section 182(a)(2)(B) of the Act directed EPA to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The Act further requires each area required to have an I/M program to incorporate this guidance into the SIP. Based on these requirements, EPA promulgated I/M regulations on November 5, 1992 (57 FR 52950, codified at 40 Code of Federal Regulations (CFR) 51.350–51.373).

The I/M regulation establishes minimum performance standards for basic I/M programs as well as requirements for the following: network type and program evaluation; adequate tools and resources; test frequency and convenience; vehicle coverage; test procedures and standards; test equipment; quality control; waivers and compliance via diagnostic inspection; motorist compliance enforcement; motorist compliance enforcement program oversight; quality assurance; enforcement against contractors, stations and inspectors; data collection; data analysis and reporting; inspector training and licensing or certification; public information and consumer protection; improving repair effectiveness; compliance with recall notices; on-road testing; SIP revisions; and implementation deadlines. The performance standard for basic I/M programs remains the same as it has been since initial I/M policy was established in 1978, pursuant to the 1977 amendments to the Clean Air Act.

The Commonwealth of Kentucky contains the Louisville urbanized area portion of the Louisville ozone nonattainment area which is classified as moderate. The Louisville ozone nonattainment area also includes two counties in Indiana. Section 51.372(b)(2) of the federal I/M regulation (codified at 40 CFR 51.372(b)(2)) required affected states to submit full I/M SIP revisions that met the requirements of the Act to EPA by November 15, 1993. This notice addresses only the Jefferson County portion of the nonattainment area.

On November 12, 1993, the Commonwealth of Kentucky, through the Kentucky Natural Resources and Environmental Protection Cabinet submitted to EPA a revised SIP for an improved basic I/M program for Jefferson County. This submittal included revisions to Regulation 8.01, Mobile Source Emissions Control; Regulation 8.02, Vehicle Emissions Testing Procedure; and 8.03, Commuter Vehicle Testing Requirements. The I/M regulations were adopted by the Department of Planning and Environmental Management, Air Pollution Control District (APCD) of Jefferson County, Kentucky on February 17, 1993, and became effective on March 1, 1993, and on September 14, 1993, for Regulation 8.03. EPA summarizes the requirements of the Federal I/M regulations as found in 40 CFR 51.350–51.373 and its analysis of the state submittal below. Parties desiring additional details on the Federal I/M regulation are referred to the November 5, 1992, **Federal Register** notice (57 FR 52950) or 40 CFR 51.350–51.373.

## II. EPA's Analysis of the Louisville, Kentucky, Basic I/M Program

As discussed above, section 182(a)(2)(B) of the Act requires that states adopt and implement updated regulations for I/M programs in moderate and above ozone nonattainment areas. The following sections of this notice summarize the requirements of the Federal I/M regulations and address whether the elements of the Commonwealth's submittal comply with the Federal rule.

*Applicability—40 CFR 51.350*

Section 182(b)(4) of the Act and 40 CFR 51.350(a)(4) require that any area classified as moderate ozone nonattainment and not required to implement enhanced I/M under 40 CFR 51.350(a)(1) shall implement basic I/M in the 1990 Census-defined urbanized nonattainment area. The urbanized portion of the Louisville nonattainment area includes most, but not all of Jefferson County, a portion of Bullit County, Kentucky, and portions of Clark and Floyd Counties in Indiana. The population distribution of these counties is such that an equivalent or greater population is covered by an I/M program in all of Jefferson County, Kentucky, and all of Clark and Floyd Counties in Indiana. The Kentucky submittal contains the legal authority and regulations necessary for the Jefferson County APCD to establish the program boundaries and operate a basic I/M program. The I/M program for Clark and Floyd Counties will be submitted by Indiana and will be addressed in a separate notice.

The program boundaries described in the Kentucky submittal meet the Federal I/M requirements under section 51.350 and are approvable.

The Federal I/M regulation requires that state programs shall not lapse prior to the time they are no longer needed. EPA has concluded that a program that does not lapse prior to the attainment deadline for each applicable area would meet this requirement. The attainment date for the Louisville ozone nonattainment area is November 15, 1996, and the Jefferson County I/M regulations contained in the Kentucky submittal do not establish an I/M program implementation sunset date prior to the attainment deadline. EPA therefore concludes that this section is approvable.

Jefferson County's Regulation 8.03 also subjects owners or operators of vehicles who routinely or regularly commute to Jefferson County, Kentucky, for employment or self-employment to the same vehicle emissions testing program as residents of the county. The employer is responsible for providing a list of such vehicle owners subject to the provisions of this regulation. EPA has determined this section of the submittal is approvable.

*Basic I/M Performance Standard—40 CFR 51.352*

The basic I/M program must be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm) for certain pollutants. The performance standard shall be established using local characteristics, such as vehicle mix and local fuel controls, and the following model I/M program parameters: network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emission control device,

evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. At the time of the Kentucky submittal the most current version was MOBILE5a. Areas shall meet or exceed the performance standard for the pollutants which cause them to be subject to basic I/M requirements. In the case of ozone nonattainment areas, the performance standard must be met for both $NO_X$ and VOCs.

The Kentucky submittal includes the following program design parameters:

network type—centralized, test-only
start date—1984
test frequency—annual
model year coverage—1968 and later
vehicle type coverage—light and heavy duty gasoline powered vehicles
emission test—Idle
emission standards—1.2 percent CO, 220 ppm HC
emission control device—none
evaporative system checks (pressure)—1984 and later
stringency (pre-1981 failure rate)—20 percent
waiver rate (pre-81/81 and newer)—22 percent/17 percent
compliance rate—99 percent
evaluation date(s)—January 1, 1997

The Jefferson County, Kentucky, program design parameters meet the Federal I/M regulations and are approvable.

The emission levels achieved by the County were modeled using MOBILE5a. The modeling demonstration was performed correctly, used local characteristics and demonstrated that the program design will exceed the minimum basic I/M performance standard, expressed in gpm, for VOCs and NOx for each milestone and for the attainment deadline. The modeling demonstration is approvable.

*Network Type and Program Evaluation—40 CFR 51.353*

Basic I/M programs can be operated in a centralized test-only format, in a decentralized test and repair, or in any hybrid version as long as states can demonstrate that the selected program is effective in achieving the basic I/M performance standard. The APCD will administer a centralized I/M program in Jefferson County. The enhanced program evaluation requirements of this section do not pertain to the Jefferson County program as it is a basic I/M program. The network type is approvable.

*Adequate Tools and Resources—40 CFR 51.354*

The Federal regulation requires states to demonstrate that adequate funding of the program is available. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund and used to finance the program. Alternative funding approaches are acceptable if demonstrated that the funding can be maintained. Reliance on funding from a state or local General Fund is not acceptable unless doing otherwise would be a violation of the state's constitution. The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP shall also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

The Jefferson County, Kentucky, program is to be funded by direct reimbursement of the primary contractor from vehicle inspection fees. A portion of the vehicle inspection fee will be returned to APCD to cover the cost of program oversight and will be sufficient to cover the activities of the audit contractor, and the Department of Planning and Environmental Management. This method meets the Federal regulation and is approvable. The submittal demonstrates that sufficient funds, equipment and personnel have been appropriated to meet program operation requirements. The Commonwealth submittal meets the adequate tools and resources requirements set forth in the Federal I/M regulations and is approvable.

*Test Frequency and Convenience—40 CFR 51.355*

The SIP shall describe the test year selection scheme, how the test frequency is integrated into the enforcement process and shall include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program shall be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

The Jefferson County, Kentucky, I/M regulation provides for an annual test frequency for all covered vehicles. A vehicle is assigned a test month. Prior to the assigned test month, the program contractor notifies the vehicle owner when their vehicles may be tested. The vehicle may be tested in either the month prior to the assigned month or in the assigned month. Vehicle owners not complying with the testing requirement by the end of the assigned month are notified they are in violation and subject to criminal prosecution. Continued noncompliance results in a court appearance. A guilty verdict results in a fine and the mandatory payment of court costs. The assignment of test months within each test year will be made using a method to be determined by the program contractor, and is based on the registration month of the vehicle. The program RFP sets standards for station convenience and requires a station in each quadrant of Jefferson County. The contract calls for all lanes to be operational at peak times as defined in the Request For Proposals (RFP). The contract also calls for additional lanes to be opened as practical whenever queuing in all operating lanes at a station exceeds an average of five cars per operating lane. The submittal meets the requirements for testing frequency and convenience and is approvable.

*Vehicle Coverage—40 CFR 51.356*

The performance standard for basic I/M programs assumes coverage of all 1968 and later model year light duty vehicles (LDV) and light duty trucks (LDT) up to 8,500 pounds gross vehicle weight rating (GVWR), and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered or required to be registered within the I/M program area boundaries and fleets primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in independent, test-only facilities, according to the requirements of 40 CFR 51.353(a). Vehicles which are operated on Federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in the state or local I/M area.

The Federal I/M regulation requires that the SIP shall include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement, a detailed description of the number and types of

vehicles to be covered by the program and a plan for how those vehicles are to be identified including vehicles that are routinely operated in the area but may not be registered in the area, and a description of any special exemptions including the percentage and number of vehicles to be impacted by the exemption.

The Jefferson County I/M regulation requires all vehicles up to 18,000 pounds gross vehicle weight registered in the county except diesel vehicles, two stroke motorcycles, and vehicles which the APCD Administrator has determined shall not be tested because of fuel or engine characteristics, to be tested annually. In addition to light duty vehicles and light duty trucks, motorcycles, motorhomes, and large gasoline powered vehicles are subject to testing. Vehicle owners are notified that the vehicle is required to be tested prior to registration via a computer matching mechanism. Noncomplying vehicle owners are issued a Notice of Violation. Regulation 8.03 also requires commuters into Jefferson County to have their vehicles tested. This regulation requires all employers to submit a list of employees that live outside of Jefferson County but commute to their jobs in Jefferson County. Fleet self testing is allowed only for businesses not involved in the general repair or sales of vehicles. Quality control requirements apply equally to both the centralized testing stations and the fleet self testers. Federally owned vehicles are subject to the testing requirements. Vehicles from other areas may be tested and the APCD will also accept test results from other approved testing programs. Exempted vehicles are taken into account in the performance standard demonstration.

The Commonwealth's plan for testing fleet vehicles is acceptable and meets the requirements of the Federal I/M regulation.

Owners of vehicles which are registered in the program area but are operated more than 250 miles outside of the area for extended periods, such as with students and military personnel, may apply for an extension. The vehicle owner must present a sworn affidavit with documentation that the vehicle will be based at the remote location for the time period claimed. The vehicle must be presented for testing once it is returned to Jefferson County. The Kentucky submittal meets the requirements of this section.

*Test Procedures and Standards—40 CFR 51.357*

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR Part 51.357 and in the EPA document entitled ''Recommended I/M Short Test Procedures For the 1990's: Six Alternatives.''

The Commonwealth's I/M submittal includes a description of the test procedure used in the Louisville I/M program. The program contract requires the procedure described in Appendix H, which contains the EPA short tests mentioned above, to be utilized. Specifically, Test 1 provides for minor modifications to EPA's ''Idle Test Procedure with Loaded Preconditioning.'' Test 2 contains the same modifications to EPA's ''Idle Test Procedure.'' The modification is to allow the Contractor to declare an Initial Test Mode Failure at less than the overall maximum initial test time of 55 seconds which shall result in performing the second chance as prescribed in the referenced EPA document. Regulation 8.02 added the requirement for testing the evaporative system with the EPA recommended pressure test. The evaporative system pressure test procedure is the EPA procedure described in Appendix B, Subpart 5, Part 51.

These test procedures conform to EPA approved test procedures and are approvable. The I/M regulation for Jefferson County establishes hydrocarbon (HC) and carbon monoxide (CO) pass/fail exhaust standards for all test procedures for each applicable model year and vehicle type. The exhaust standards adopted by the Commonwealth conform to EPA established standards and are approvable. The Jefferson County I/M regulation establishes evaporative pressure test standards which conform to EPA established standards and are approvable.

*Test Equipment—40 CFR 51.358*

Computerized test systems are required for performing any measurement on subject vehicles. The Federal I/M regulation requires that state SIP submittals include written technical specifications for all test equipment used in the program. The specifications shall describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The Jefferson County I/M regulation and RFP require exhaust analyzers that meet the BAR90 performance specifications. These specifications require the use of computerized test systems. The specifications also include performance features and functional characteristics of the computerized test systems which meet the Federal I/M regulations and are approvable.

*Quality Control—40 CFR 51.359*

Quality control measures shall insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

Section 9 of the Jefferson County regulations, the RFP, and the contract all contain quality control requirements for the emission measurement equipment, record keeping requirements and measures to maintain the security of all documents used to establish compliance with the inspection requirements. A special software encryption algorithm codes the ''Inspection Number'' field on the test form and cannot be duplicated without access to the source code. The RFP also contains the requirement for two mobile audit vans which provide overt audit capability. They are provided by the contractor, but used by APCD personnel. This portion of the Kentucky submittal complies with the quality control requirements set forth in the Federal I/M regulation and is approvable.

*Waivers and Compliance via Diagnostic Inspection—40 CFR 51.360*

The Federal I/M regulation allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards. For basic I/M programs, an expenditure of at least $75 for pre-81 vehicles and $200 for 1981 and later vehicles in repairs, is required in order to qualify for a waiver. Waivers can only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs before expenditures can be counted toward the cost limit. Tampering related repairs shall not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. Repairs for 1980 and newer model year vehicles must be performed by a recognized repair technician. The Federal regulation allows for compliance via a diagnostic inspection after failing a retest on emissions and requires quality control of waiver issuance. The SIP must set a maximum waiver rate and must describe corrective action that would be taken if the waiver rate exceeds that contained in the SIP.

The Jefferson County regulation provides the necessary authority to

issue waivers, set cost limits, administer and enforce the waiver system. The submittal commits to a maximum waiver rate as established in the performance standard demonstration and commits to corrective action to reduce the waiver rate if this value is exceeded. The Jefferson County Regulation 8.01 sets a $75 cost limit for pre-81 vehicles and $200 for 1981 and newer vehicles. The regulation includes provisions which address waiver criteria and procedures, including cost limits, tampering and warranty related repairs, quality control and administration. A unique feature of the regulation is any vehicle owner requesting a waiver must submit the vehicle for review at the APCD referee test center and must show a measurable improvement in emissions. A vehicle repair form must be submitted by the owner at that time, verifying the repairs. The vehicle is diagnosed by APCD personnel that must be ASE certified Master Mechanics as well as sworn Kentucky peace officers and EPA Administrator designated representatives for tampering and fuels. These provisions meet the Federal I/M regulations requirements and are approvable.

*Motorist Compliance Enforcement—40 CFR 51.361*

The Federal regulation requires that compliance shall be ensured through the denial of motor vehicle registration in I/M programs. However, a basic area may use an alternative enforcement mechanism if it demonstrates that the alternative will be as effective as registration denial. The SIP shall provide information concerning the enforcement process, legal authority to implement and enforce the program, a commitment to a compliance rate to be used for modeling purposes and to be maintained in practice. The Jefferson County regulation provides the legal authority to implement a computer matching enforcement system. The RFP contains a detailed description of the enforcement process. The contractor is responsible for data operations. This includes a requirement to update the database every Monday. A database of tested vehicles is compared to a database of registered subject vehicles. The testing process for the vehicle owner begins when the owner is sent a reminder of the testing requirement by the contractor. Any owner failing to obtain a certificate of compliance by the end of the assigned month will be sent a notice of violation (NOV) which states that if the vehicle is brought in for testing that month no further action will be taken. A legal notice called Notice of Court Action (NOCA) will be sent by the contractor to the vehicle owner who fails to have the vehicle tested by the end of the NOV month. This notice states that, if the owner obtains a certificate of compliance by a specified cutoff date, a criminal complaint which has already been prepared in his name, will not be processed by the Jefferson County District Court. The cutoff date is established by the APCD each month. When an owner fails to obtain a certificate of compliance by the cutoff date, a sworn criminal complaint is filed in the Jefferson district court pursuant to the Kentucky Rules of Criminal Procedure. The fine for violations shall not be less than $10 and not more than $50 for the first offense and not less than $50 or more than $100 for each subsequent offense. Payment of court costs by a defendant, upon conviction, shall be mandatory and cannot be probated or suspended.

Jefferson County Regulation 8.03 contains a requirement that people living outside of the County but working in it must have their vehicles inspected. The employer is responsible for providing a list of vehicle owners subject to this requirement. An employer may be fined up to $500 per day per offense. Enforcement against vehicle owners is the same as for residents of Jefferson County. The submittal commits to maintaining the compliance rate used in the performance standard demonstration. This portion of the Kentucky submittal meets the Federal requirements and is approvable.

*Motorist Compliance Enforcement Program Oversight—40 CFR 51.362*

The Federal I/M regulation requires that the enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary. The SIP shall include quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system. An information management system shall be established which will characterize, evaluate and enforce the program.

The Jefferson County regulation provides the legal authority to implement a computer matching enforcement system. The RFP contains a detailed description of the enforcement process. The submittal also describes the process used in auditing the computer matching enforcement mechanism. Compliance with the vehicle inspection program is audited by the Jefferson County APCD by routine checks of Kentucky vehicle registration records against I/M test records. Additionally, Jefferson County APCD enters all court records of all noncompliance cases into a computer program to verify appropriate action was taken. Cases are identified as ultimately receiving the inspection after appropriate legal action, the vehicle being removed from the owner's record because of sale or scrappage of vehicle, or no test required because the vehicle has been removed from use on the road. This portion of the Kentucky submittal meets the Federal requirements and is approvable.

*Quality Assurance—40 CFR 51.363*

An ongoing quality assurance program shall be implemented to discover, correct and prevent fraud, waste, and abuse in the program. The program shall include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all state I/M enforcement officials and auditors. A description of the quality assurance program which includes written procedure manuals on the above discussed items must be submitted as part of the SIP.

The Kentucky submittal includes a quality assurance program which describes details and procedures for implementing inspector, records, and equipment audits. Performance audits of inspectors and testing equipment will be performed by the APCD personnel. Regulation 8, Sections 8 and 9 require various quality assurance and control functions be performed to insure correct program operation. These include overt and covert audits and remote observation of inspection personnel performing testing. Overt audits may be performed by APCD personnel at any time, unannounced, during station operation. Covert audits are required to use a range of vehicles which have been set to fail the inspection test. The RFP requires the contractor to develop quality assurance and control procedures as well as operations manuals. The quality assurance requirements and procedures in the Jefferson County program meet the Federal I/M regulation requirements and are approvable.

*Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364*

Enforcement against licensed stations or contractors, and inspectors shall include swift, sure, effective, and consistent penalties for violation of program requirements. The Federal I/M regulation requires the establishment of minimum penalties for violations of

program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP. State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits. The SIP shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the resources and sources of those resources which will support this function.

The Kentucky submittal includes the legal authority to establish and impose penalties against stations, contractors and inspectors. The Jefferson County enforcement program is staffed by Kentucky peace officers and immediate action and prosecution is taken when needed. The Jefferson County APCD auditors can suspend licenses and operations immediately upon detection of a violation. The RFP establishes fines to the contractor for failure to perform as required. Inspectors may be decertified. The Jefferson County I/M program meets the requirements of this section and is approvable.

*Data Collection—40 CFR 51.365*

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The Federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR 51.359.

Jefferson County Regulation 8.01, Section 7, specifies the information contained on the inspection form. The RFP requires the collection of data, and subsequent analysis, on each individual test conducted and describes the type of data to be collected. The type of test data collected meets the Federal I/M regulation requirements and is approvable. The submittal also commits to gather and report the results of the quality control checks required under 40 CFR 51.359 and is approvable.

*Data Analysis and Reporting—40 CFR 51.366*

Data analysis and reporting are required to allow for monitoring and evaluation of the program by the states and EPA. The Federal I/M regulation requires annual reports to be submitted which provide information and statistics and summarize activities performed for each of the following programs: testing, quality assurance, quality control and enforcement. These reports are to be submitted by July and shall provide statistics for the period of January to December of the previous year. A biennial report shall be submitted to EPA which addresses changes in program design, regulations, legal authority, program procedures and any weaknesses in the program found during the two year period and how these problems will be or were corrected.

The Jefferson County I/M program RFP provides for the analysis and reporting of data for the testing program, quality assurance program, quality control program and the enforcement program. The type of data to be analyzed and reported meets the Federal I/M regulation requirements and is approvable. Jefferson County commits to submit all required reports to EPA. Additionally, Jefferson County APCD commits to submitting the annual reports on these programs to EPA by July of the subsequent year. These annual reports will be submitted July 1, 1996, and each July 1 thereafter, covering the previous test year. The submittal commits to the reports required under 40 CFR 51.366 and is approvable.

*Inspector Training and Licensing or Certification—40 CFR 51.367*

The Federal I/M regulation requires all inspectors to be formally trained and licensed or certified to perform inspections.

The Jefferson County I/M regulation requires all inspectors to receive formal training, be certified by APCD and renew the certification every year. The inspector must attend a training course and pass an examination with at least a score of 80%. The SIP meets the Federal I/M regulation requirements for inspector training and certification and is approvable.

*Public Information and Consumer Protection—40 CFR 51.368*

The Federal I/M regulation requires the SIP to include a public information and consumer protection program. The RFP includes a public information program which educates the public on I/M, Commonwealth and Federal regulations, air quality and the role of motor vehicles in the air pollution problem and other items as described in the Federal rule. The consumer protection program includes provisions for a challenge mechanism, protection of whistle blowers and providing assistance to motorists in obtaining warranty covered repairs. The public information and consumer protection programs contained in the SIP submittal meet the Federal regulations and are approvable.

*Improving Repair Effectiveness—40 CFR 51.369*

Effective repairs are the key to achieving program goals. The Federal regulation requires states to take steps to ensure that the capability exists in the repair industry to repair vehicles. The SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements required in the Federal regulation and a description of the repair technician training resources available in the community.

The Jefferson County regulations contain a provision regarding vehicle repair forms. These must be completed by a professional mechanic registered with the APCD, or the vehicle owner in cases of self-repair. A mechanic registered by the APCD must pass an APCD training course in which air pollution and vehicles are discussed. The APCD also maintains a hotline staffed by ASE certified master technicians. Motorists whose vehicles fail the test are given a repair facility report card. This report card contains information regarding a facility's success in repairing vehicles and having them pass the inspection retest. The APCD provides regular feedback to each facility on their repair performance. The performance monitoring program design meets the criteria described in the Federal regulation and is approvable. The repair effectiveness program described in the SIP meets the Federal regulation and is approvable.

*Compliance With Recall Notices—40 CFR 51.370*

The Federal regulation requires the states to establish methods to ensure that vehicles that are subject to enhanced I/M and are included in an emission related recall receive the required repairs prior to completing the emission test or renewing the vehicle registration.

The Jefferson County nonattainment area is classified as moderate and therefore not subject to this provision.

*On-road Testing—40 CFR 51.371*

On-road testing is required in enhanced I/M areas. The use of either remote sensing devices (RSD) or roadside pullovers including tailpipe emission testing can be used to meet the Federal regulations. The program must

include on-road testing of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, in the nonattainment area or the I/M program area. Motorists that have passed an emission test and are found to be high emitters as a result of a on-road test shall be required to pass an out-of-cycle test.

The Jefferson County nonattainment area is classified as moderate and therefore not subject to this provision.

*State Implementation Plan Submissions/Implementation Deadlines—40 CFR 51.372–373*

The Federal regulation requires centralized basic I/M programs to be fully implemented by January 1, 1994. The Jefferson County I/M program has been in operation since 1984. The changes required by the CAA were implemented during 1993. The SIP meets the SIP submission and implementation deadline requirements set forth in the Federal I/M regulation.

EPA's review of the material indicates that the Commonwealth has adopted a basic I/M program in accordance with the requirements of the Act. EPA is approving the Kentucky SIP revision for a basic I/M program in Jefferson County, which was submitted on November 12, 1993.

**Final Action**

The EPA is approving the Jefferson County I/M revision and is publishing this action without prior proposal because the agency views this as a noncontroversial amendment and anticipates no adverse public comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comment be filed. This action will be effective September 26, 1995 unless, by August 28, 1995 adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be discussed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period for this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 26, 1995.

EPA is approving this revision to the Kentucky SIP for a basic I/M program. The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

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

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

SIP approvals under 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. sections 7410(a)(2) and 7410(k)(3).

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any local or tribal governments have elected to adopt the program provided for under Section 182 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose any mandate upon the State, local, or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and Recordkeeping requirements.

Dated: June 28, 1995.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

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

**PART 52—[AMENDED]**

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

**Authority:** 42 U.S.C. 7401–7671q.

**Subpart S—Kentucky**

2. Section 52.920, is amended by adding paragraph (c)(72) to read as follows:

**§ 52.920 Identification of plan.**

* * * * *

(c) * * *

(72) Modifications to the existing basic I/M program in Jefferson County to implement an anti-tampering check, pressure testing of the evaporative control system, and testing of commuter vehicles submitted by the Commonwealth of Kentucky on November 12, 1993.

(i) Incorporation by reference. Regulation 8.01 and 8.02, adopted on February 17, 1993, and Regulation 8.03 adopted on February 17, 1993.

(ii) Other material. None.

* * *

[FR Doc. 95–18513 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 52

**[NC–062–1–6430a; NC–068–1–6632a; NC–067–1–6633a; FRL–5254–6]**

## Approval and Promulgation of Implementation Plans; State: Approval of Revisions to the State of North Carolina's State Implementation Plan (SIP)

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the North Carolina State Implementation Plan (SIP) to allow the State and two local air pollution control agencies to issue Federally enforceable state operating permits (FESOP) and Federally enforceable local operating permits (FELOP). On May 31, 1994, the State of North Carolina through the Department of Environment, Health, and Natural Resources (DEHNR) submitted a SIP revision fulfilling the requirements necessary to issue FESOP. On June 1, 1994, the Forsyth County Department of Environmental Affairs (FCDEA) through the DEHNR submitted a SIP revision fulfilling the requirements necessary to allow Forsyth County to issue FELOP. On September 15, 1994, the Western North Carolina Regional Air Pollution Control Branch (WNCRAPCB) through the DEHNR submitted a SIP revision fulfilling the requirements necessary to allow the Western Carolina to issue FELOP. These submittals conform with the requirements necessary for a state or local agency's minor source operating permit program to become Federally enforceable. In order to extend the Federal enforceability of state and local operating permits to hazardous air pollutants (HAP), EPA is also proposing approval of the North Carolina, Forsyth County, and Western Carolina FESOP and FELOP regulations pursuant to section 112 of the Act.

**DATES:** This action will be effective by September 26, 1995 unless notice is received by August 28, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:**

Written comments should be addressed to Scott Miller at the EPA Regional office listed below.

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

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

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

North Carolina Department of Health, Environment, and Natural Resources, Air Quality Section, P.O. Box 29535, Raleigh, North Carolina 27626.

Forsyth County Environmental Affairs Department, Air Quality Section, 537 North Spruce Street, Winston-Salem, North Carolina 27101.

Western North Carolina Regional Air Pollution Control Agency, Buncombe County Courthouse, 60 Court Plaza, Asheville, North Carolina 28801.

**FOR FURTHER INFORMATION CONTACT:** Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365.The telephone number is 404/347–3555 extension 4153. Reference file numbers NC–068–1–6632; NC–067–1–6633; NC–062–1–6430.

**SUPPLEMENTARY INFORMATION:** On May 31, 1994, June 1, 1994, and September 15, 1994, the State of North Carolina, the FCDEA, and the WNCRAPCB, respectively, through the DEHNR submitted SIP revisions designed to allow the three agencies to issue operating permits which are Federally enforceable pursuant to EPA requirements as specified in a **Federal Register** notice, ''Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules.'' (See 54 FR 22274, June 28, 1989). These voluntary SIP revisions allow EPA and citizens to enforce terms and conditions of state-issued and local-issued minor source operating permits. In addition, operating permits that are issued under a state or local agency's minor source operating permit program that is approved into the SIP may provide Federally enforceable limits to an air pollution source's potential to emit. Limiting of a source's potential to emit through Federally enforceable operating permits can affect a source's applicability to Federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants and Federal air toxics requirements mandated under section 112 of the Clean Air Act as amended in 1990 (CAA).

In the aforementioned June 28, 1989, **Federal Register** document, EPA listed five criteria necessary to allow a state or local agency's operating permit program to become Federally enforceable and, therefore, approvable into the SIP.

The first criteria for a state or local agency's operating permit program to become Federally enforceable is that the FESOP or FELOP program must be approved into the SIP. On May 31, 1994, June 1, 1994, and September 15, 1994, the State of North Carolina, the FCDEA, and the WNCRAPCB, respectively, through the DEHNR submitted SIP revisions designed to meet the five criteria for Federal enforceability. This action will approve these regulations into the North Carolina SIP, thereby, meeting the first criteria for Federal enforceability.

The second criteria for a state's operating permit program to become Federally enforceable is that the regulations approved into the SIP impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits. North Carolina Regulation 15A NCAC 2Q.0306(b) addresses this requirement by outlining specific measures that the State may take in the event of the ''failure of the owner or operator of a source permitted pursuant to this Rule to adhere to the terms and limitations of the permit.'' These measures include an enforcement action, permit termination, revocation, and reissuance as well as a denial of permit renewal application. Both the FCDEA and the WNCRAPCB operating permit programs meet this requirement by a verbatim incorporation of the State's Regulation 15A NCAC 2Q.0306(b) into their regulations.

The third criteria necessary for a state or local agency's operating permit program to be Federally enforceable is that the operating permit program require that all emissions limitations, controls, and other requirements imposed by such permits will be at least

as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise ''Federally enforceable'' (e.g. standards established under sections 111 and 112 of the Act). North Carolina Regulation 15A NCAC 2Q.0306(c) requires that all emissions limitations, controls, and other requirements imposed by a permit issued pursuant to this Rule shall be at least as stringent as any other applicable requirement as defined under Rule .0103 (effective date of July 1, 1994). The definition of applicable requirement found in 15A NCAC 2Q.0103 includes among other things requirements in the North Carolina SIP. In addition, Regulation 15A NCAC 2Q.0306(c) requires that the permit shall not waive or make less stringent any limitation or requirement contained in applicable requirement. Both the FCDEA and the WNCRAPCB operating permit programs meet this requirement by a verbatim incorporation of the State's Regulation 15A NCAC 2Q.0306(b) into their regulations. Therefore, the third criteria for Federal enforceability is met.

The fourth criteria for a state or local agency to be able to issue FESOP or FELOP is that limitations, controls, and requirements in the operating permits are quantifiable, and otherwise enforceable as a practical matter. While a determination of what is practically enforceable will generally differ based on process type and emissions, North Carolina Regulation 15A NCAC 2Q.0306(d) requires that ''Emissions limitations, controls, and requirements contained in permits issued pursuant to the Rule shall be permanent, quantifiable, and otherwise enforceable as a practical matter.'' Both the FCDEA and the WNCRAPCB operating permit programs meet this requirement by a verbatim incorporation of the State's Regulation 15A NCAC 2Q.0306(b) into their regulations. Therefore, the fourth criteria for Federal enforceability is met.

The fifth criteria for a state or local agency to be able to issue FESOP or FELOP is to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be Federally enforceable. This process also must provide for an opportunity for public comment on the permit applications prior to issuance of the final permit. North Carolina Regulation 15A NCAC 2Q.0306(a)(5) requires that any source which wishes to limit its potential to emit via a permit for PSD/NSR or title V purposes must go through an opportunity for public comment as well as public hearing. In addition, Regulation 15A NCAC 2Q.0306(a)(12) allows any owner or operator who requests that a draft permit go to public notice with an opportunity to request a public hearing to do so. EPA notes that any permit which has not gone through an opportunity for public comment and EPA review in the North Carolina, the FCDEA and the WNCRAPCB FESOP or FELOP programs will not be Federally enforceable. North Carolina Regulation 15A NCAC 2Q.0307(d) requires that there will be at least a 30 day public and EPA comment period prior to permit issuance. North Carolina Regulation 15A NCAC 2Q.0307(g) provides that the Director will send a copy of each draft permit when it sends EPA the notice of request for public comment for that permit. Finally, Regulation 15A NCAC 2Q.0307(g) provides that the State will send a copy of each final permit after the permit is issued. Both the FCDEA and the WNCRAPCB operating permit programs meet this requirement by a verbatim incorporation of the State's Regulations 15A NCAC 2Q.0306(a)(5), 15A NCAC 2Q.0306(a)(12), 15A NCAC 2Q.0307(d), 15A NCAC 2Q.0307(g) into their regulations. Therefore, the fifth criteria for Federal enforceability is met.

On June 28, 1989 (54 FR 27274), EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of FESOP and FELOP. Permits issued pursuant to an operating permit program approved into the SIP as meeting these criteria may be considered Federally enforceable. EPA has encouraged states and local agencies to develop such FESOP and FELOP programs in conjunction with title V operating permits programs to enable sources to limit their potential to emit to below the title V applicability thresholds. (See the guidance document entitled, ''Limitation of Potential to Emit with Respect to Title V Applicability Thresholds,'' dated September 18, 1992, from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards (OAQPS), Office of Air and Radiation, U.S. EPA.) On November 3, 1993, the EPA announced in a guidance document entitled, ''Approaches to Creating Federally Enforceable Emissions Limits,'' signed by John S. Seitz, Director, OAQPS, that this mechanism could be extended to create Federally enforceable limits for emissions of HAP if the program were approved pursuant to section 112(l) of the Act.

In addition to requesting approval into the SIP, North Carolina, the FCDEA and the WNCRAPCB have also requested approval of their FESOP and FELOP programs under section 112(l) of the Act for the purpose of creating Federally enforceable limitations on the potential to emit of HAP. Approval under section 112(l) is necessary because the proposed SIP approval discussed above only extends to the control of criteria pollutants. Federally enforceable limits on criteria pollutants (i.e., VOC's or PM–10) may have the incidental effect of limiting certain HAP listed pursuant to section 112(b).[1] However, section 112 of the Act provides the underlying authority for controlling all HAP emissions.

EPA believes that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989, **Federal Register** document, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989, document does not address HAP because it was written prior to the 1990 amendments to section 112 not because it establishes requirements unique to criteria pollutants. Hence, the following five criteria are applicable to FESOP and FELOP approvals under section 112(l): (1) The program must be submitted to and approved by the EPA; (2) the program must impose a legal obligation on the operating permit holders to comply with the terms and conditions of the permit, and permits that do not conform with the June 28, 1989, criteria or the EPA's underlying regulations shall be deemed not Federally enforceable; (3) the program must contain terms and conditions that are at least as stringent as any requirements contained in the SIP, enforceable under the SIP, or any section 112 or other CAA requirement, and may not allow for the waiver of any CAA requirement; (4) permits issued under the program must contain conditions that are permanent, quantifiable, and enforceable as a practical matter; and (5) permits that are intended to be Federally enforceable must be issued subject to public participation and must be provided to the EPA in proposed form on a timely basis.

In addition to meeting the criteria in the June 28, 1989, document, a FESOP or FELOP program that addresses HAP must meet the statutory criteria for

[1] The EPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.

approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

EPA plans to codify the approval criteria for programs limiting potential to emit of HAP, such as FESOP programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the Act. (See 58 FR 62262, November 26, 1993.) EPA also anticipates given that these regulatory criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989, document. EPA currently anticipates that since FESOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

EPA has authority under section 112(l) to approve programs to limit potential to emit of HAP directly under section 112(l) prior to this revision to Subpart E. Section 112(l)(5) requires EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This could be read to suggest that the ''guidance'' referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the severe timing problems posed by impending deadlines set forth in ''maximum achievable control technology'' (MACT) emission standards under section 112 and for submittal of title V permit applications, it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue.

Therefore, EPA is approving the North Carolina, Forsyth County, and the Western North Carolina minor source operating permit program now to allow these agencies to begin issuing FESOP and FELOP as soon as possible.

EPA believes that the North Carolina, Forsyth County, and the Western North Carolina FESOP and FELOP programs meet the approval criteria specified in the June 28, 1989, **Federal Register** document and in section 112(l)(5) of the Act. As discussed previously in this notice, the North Carolina, Forsyth County, and Western Carolina minor source operating permit programs meet the five criteria necessary for Federal enforceability.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes that the North Carolina, Forsyth County, and Western Carolina minor source operating permit programs contain adequate authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989, document is met, that is, because the program does not allow for the waiver of any section 112 requirement. Sources that become minor through a permit issued pursuant to this program would still be required to meet section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, EPA believes that North Carolina, Forsyth County, and Western Carolina have demonstrated that each agency can provide for adequate resources to support the FESOP and FELOP program. EPA expects that since North Carolina, Forsyth County, and Western Carolina have administered a minor source operating permit program for several years resources will continue to be adequate to administer the FESOP or FELOP program. EPA will monitor the implementation of each Agency's FESOP or FELOP to ensure that adequate resources are in fact available. EPA also believes that the North Carolina, Forsyth County, and Western Carolina FESOP or FELOP provide for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in any of these programs would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate Federally enforceable limit by the relevant deadline. Finally, EPA believes it is consistent with the intent of section 112 and the Act for states to provide a mechanism through which sources may avoid classification as a major source by obtaining a Federally enforceable limit on potential to emit.

With the addition of these provisions, the North Carolina, Forsyth County, and Western Carolina minor source operating permit program satisfies all the requirements listed in the June 28, 1989, **Federal Register** document. Therefore, EPA is approving this revision to the State of North Carolina's SIP allowing the State and local agency to issue FESOP and FELOP.

**Final Action**

In this action, EPA is approving the North Carolina, Western Carolina, and Forsyth County minor source operating permit program into the North Carolina SIP to allow the State and local agencies to issue FESOP and FELOP. EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 26, 1995 unless by August 28, 1995, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 26, 1995.

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

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2).)

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or

establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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

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

*D. Unfunded Mandates Reform Act of 1995*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed interim approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Sulfur oxides.

Dated: June 23, 1995.

**William A. Waldrop,**

*Acting Regional Administrator.*

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

## PART 52—[AMENDED]

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

**Authority:** 42.U.S.C. 7401–7671q.

2. Section 52.1770 is amended by adding paragraph (c)(74) to read as follows:

**§ 52.1770 Identification of plan.**

* * * * *

(c) * * *

(74) The minor source operating permit programs for the State of North Carolina, Western North Carolina Regional Air Pollution Control Board, and Forsyth County Department of Environmental Affairs submitted by the North Carolina Department of Environment, Health, and Natural Resources on May 31, 1994, June 1, 1994, and September 15, 1994, as part of the North Carolina SIP.

(i) Incorporation by reference.

(A) Regulations 15A NCAC 2Q.0103, 15A NCAC 2Q.0301, 15A NCAC 2Q.0303 through 15A NCAC 2Q.0311 of the North Carolina SIP as adopted by the North Carolina Environmental Management Commission on May 12, 1994 and which became effective on July 1, 1994.

(B) Regulations 15A NCAC 2Q.0103, 15A NCAC 2Q.0301, 15A NCAC 2Q.0303 through 15A NCAC 2Q.0311 of the North Carolina SIP as adopted by reference by the Western North Carolina Regional Air Pollution Control Board (WNCRAPCB) on September 12, 1994 and which were made effective September 12, 1994.

(C) Regulations Subchapter 3Q.0103, Subchapter 3Q.0301, Subchapter 3Q.0303 through Subchapter 3Q.0311 of the Forsyth County portion of the North Carolina SIP as adopted and made effective by the Forsyth County Board of Commissioners on May 23, 1994.

(ii) Other material. None.

[FR Doc. 95–18525 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

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## 40 CFR Part 52

**[DE25–1–6742a; FRL–5223–3]**

## Approval and Promulgation of Air Quality Implementation Plans; Delaware—''Bulk Gasoline Marine Tank Vessel Loading Facilities''

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware on August 26, 1994. This revision establishes and requires control of volatile organic compound from marine vessel transfer operations. The intended effect of this action is to approve Regulation 24, Section 43, ''Bulk Gasoline Marine Tank Vessel Loading Facilities'', in accordance with section 183(f). This action is being taken under section 110 of the Clean Air Act (CAA).

**DATES:** This action will become effective September 26, 1995 unless notice is received on or before August 28, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 597–3164, at the EPA Region III address above.

**SUPPLEMENTARY INFORMATION:** On August 26, 1994, the State of Delaware submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of Regulation 24, ''Control of Volatile Organic Compound (VOC) Emissions'', by renumbering existing Section 43, ''Other Facilities that Emit VOCs'', to Section 50 and adding a new Section 43, ''Bulk Gasoline Marine Tank Vessel Loading Facilities'', effective August 26, 1994.

## Background

Pursuant to section 183(f) of the CAA, as amended, EPA is required to promulgate federal regulations for marine vessel loading facilities by November 15, 1992. EPA has not yet promulgated final regulations governing marine vessel loading and unloading facilities. Section 183(f)(4) of the CAA provides that a state's regulations governing emissions from tank vessels, must be at least as stringent as the Federal standards. In the future, if EPA determines that Delaware's regulations are less stringent than the federal regulations, once promulgated, those federal regulations shall preempt the Delaware's regulations and EPA will require Delaware to amend its SIP so that it is at least as stringent as the federal regulations.

VOCs contribute to the production of ground level ozone and smog. This rule was adopted as part of an effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. The following is EPA's evaluation of and action on Section 43 of Regulation 24 for the State of Delaware. Detailed descriptions of the amendments addressed in this document, and EPA's evaluation of the amendments, are contained in the technical support document (TSD) prepared for these rulemaking actions by EPA. Copies of the TSD are available from the EPA Regional office listed in the **ADDRESSES** section of this document.

## State Submittal

1. Section 43(a)(1) states that the regulation applies to all loading berths at any bulk marine tank vessel loading facility that delivers gasoline into marine tank vessels (Section (43)(a)(1)).

2. Section 43(c)(1) requires each loading berth at any bulk marine tank vessel loading facility to be equipped with a vapor collection system that is designed to collect all VOC vapors displaced from marine tank vessels during loading, ballasting, or housekeeping.

3. Section 43(c)(2) requires that each vapor collection system be designed to prevent any VOC vapors collected at one loading berth from passing to another loading berth.

4. Section 43(c)(3) requires each loading berth at any bulk marine tank vessel loading facility to reduce total VOC emissions by 98 weight-percent using a combustion device, and 95 weight-percent using a vapor recovery device.

5. Section 43(c)(9) requires that the loading of gasoline marine tank vessels be restricted to the use of submerged fill.

6. Section 43(c)(6) limits loading of gasoline to marine tank vessels whose vapor collection system is connected to the vapor collection system of the bulk gasoline marine tank loading facility.

7. Section 43(c)(7) ensures that the maximum normal operating pressure of the marine tank vessel vapor collection equipment must not exceed 0.8 times the set relief pressure of the pressure-vacuum vents in the vessel compartment.

8. Section 43(c)(8) requires each loading berth that loads gasoline into marine tank vessels, be inspected for total organic compound liquid and vapor leaks during product transfer operations. Each detection of a leak must be tagged and recorded and the source of the leak repaired within 15 days. A first attempt at repair must be made no later than 5 calendar days after the leak is detected.

## EPA's Evaluation

The regulations listed above are approvable as SIP revisions because they conform to EPA guidance and comply with the requirements of the CAA.

As required by 40 CFR 51.102, the State of Delaware has certified that a public hearing with regard to these revisions was held in Delaware on April 13, 1994.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 26, 1995, unless, by August 28, 1995, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 26, 1995.

## Final Action

EPA is approving Regulation 24, ''Control of VOC Emissions'', renumbering the existing Section 43, ''Other Facilities that Emit VOCs'', to Section 50 and adding a new Section 43, ''Bulk Gasoline Marine Tank Vessel Loading Facilities'', as a revision to the Delaware SIP. The State of Delaware submitted these amendments to EPA as a SIP revision on August 26, 1994.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify

that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Under sections 202, 203, and 205, of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 182 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action approving Delaware's regulation on Bulk Gasoline Marine Tank Vessel Loading Facilities, must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

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

Dated: April 13, 1995.

**W.T. Wisniewski,**

*Acting Regional Administrator, Region III.*

40 CFR part 52, subpart I of chapter I, title 40 is amended as follows:

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7671q.

### Subpart I—Delaware

2. Section 52.420 is amended by adding paragraph (c)(53) to read as follows:

**§ 52.420 Identification of plan.**

* * * * *

(c) * * *

(53) Revisions to the Delaware Regulations on the control of volatile organic compound emissions from marine vessel transfer operations submitted on August 26, 1994 by the Delaware Department of Natural Resources & Environmental Control:

(i) Incorporation by reference.

(A) Letter of August 26, 1994 from the Delaware Department of Natural Resources & Environmental Control transmitting Regulation 24, ''Control of Volatile Organic Compound Emissions'', by renumbering existing Section 43, ''Other Facilities that Emit Volatile Organic Compounds,'' to Section 50 and adding a new Section 43, ''Bulk Gasoline Marine Tank Vessel Loading Facilities''.

(B) Administrative changes to Section 50: renumbering existing Section 43 to Section 50, and Section 50(a)(1): renumbering 42 to 43; and the new Section 43, effective August 26, 1994.

(ii) Additional material.

(A) Remainder of August 26, 1994 State submittal pertaining to Regulation 24 referenced in paragraph (c)(53)(i) of this section.

[FR Doc. 95–18515 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

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### 40 CFR Part 52

**[TN–146–1–7039a; FRL–5226–1]**

## Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to the Nashville-Davidson County Construction and Operation Permit Regulations for Minor Sources

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the Nashville-Davidson County portion of the Tennessee State Implementation Plan (SIP) to allow Nashville-Davidson County to issue Federally enforceable local operating permits (FELOP). On November 16, 1994, Nashville-Davidson County through the Tennessee Department of Environment and Conservation (TDEC) submitted a SIP revision fulfilling the requirements necessary for a FELOP program to become Federally enforceable. In order to extend the Federal enforceability of the Nashville-Davidson County FELOP program to hazardous air pollutants (HAP), EPA is also approving the County's FELOP program pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA) so that the County may issue FELOP for HAP.

**DATES:** This final rule will be effective September 26, 1995 unless adverse or critical comments are received by August 28, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments should be addressed to Gracy R. Danois, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102),

U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.
Tennessee Department of Environment and Conservation, Tennessee Air Pollution Control Board, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.
Metropolitan Government of Nashville and Davidson County, Metropolitan Health Department, Bureau of Environmental Health Services, 311 23rd Avenue North, Nashville, Tennessee 37203.

**FOR FURTHER INFORMATION CONTACT:** Gracy R. Danois, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4150. Reference file TN–146–1–7039.

**SUPPLEMENTARY INFORMATION:** On November 16, 1994, Nashville-Davidson County through the TDEC submitted a SIP revision designed to make certain permits issued under the County's existing minor source operating permit program Federally enforceable pursuant to EPA requirements as specified in a **Federal Register** notice, ''Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules.'' (see 54 FR 22274, June 28, 1989). Nashville-Davidson County will continue to issue permits which are not Federally enforceable under its existing minor source operating permit rules as it has done in the past. The SIP revision, which is the subject of this document, adds requirements to the County's current minor source operating permit program, which allows the County to issue FELOP. This voluntary SIP revision allows EPA and citizens under the CAA to enforce terms and conditions of the Nashville-Davidson County FELOP program. Operating permits that are issued under the County's FELOP program that is approved into the Nashville-Davidson County portion of the Tennessee SIP and under section 112(l) will provide Federally enforceable limits to an air pollution source's potential to emit. Limiting a source's potential to emit through Federally enforceable operating permits can affect the applicability of Federal regulations, such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants and federal air toxics requirements mandated under section 112 of the CAA, to a source.

In the aforementioned June 28, 1989, **Federal Register** document, EPA listed five criteria necessary to make a State's [1] minor source operating permit program Federally enforceable and, therefore, approvable into the SIP. This revision satisfies the five criteria for Federal enforceability of the Nashville-Davidson County FELOP program.

The first criteria that must be met if a state's operating permit program is to become Federally enforceable is that the permit program must be approved into the SIP. On November 16, 1994, Nashville-Davidson County submitted, through TDEC, a SIP revision designed to meet the criteria for Federal enforceability. This action will approve these regulations into the Nashville-Davidson County portion of the Tennessee SIP, thereby, meeting the first criteria for Federal enforceability.

The second criteria for a state's operating permit program to become Federally enforceable is that the regulations approved into the SIP impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits. The regulations of Nashville-Davidson County meet this criteria. The Metropolitan Code of Law (M.C.L.) Section 10.56.040.F, Paragraph 1 requires the following:

> The source must agree in writing to be bound by a permit which specifies the more restrictive limit and to be subject to detailed monitoring, reporting and recordkeeping requirements that prove the source is in compliance with the applicable permit.

Hence, the second criteria for Federal enforceability is met.

The third criteria necessary for a state's operating permit program to become Federally enforceable is that the state operating permit program require that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise ''Federally enforceable'' (e.g. standards established under sections 111 and 112 of the Act). Nashville-Davidson County satisfies this criteria with the inclusion of two regulations: M.C.L. Section 10.56.040.F, Paragraph 2, which requires that ''the permit limitations, controls, and other requirements imposed by permits will be as stringent as any other applicable limitations and requirements contained in the SIP enforceable under the SIP'', and M.C.L. Section 10.56.040.D, which gives Nashville-Davidson County the authority to specify other permit requirements in addition to those contained in M.C.L. Section 10.56.040. Therefore, the County's regulations satisfy the third criteria for Federal enforceability.

The fourth criteria for a state's operating permit program to become Federally enforceable is that limitations, controls, and requirements in the operating permits are quantifiable, and otherwise enforceable as a practical matter. While a determination of what is practically enforceable will generally differ based on process type and emissions, the County has incorporated the requirements of the fourth criteria described above under M.C.L. Section 10.56.040.F, Paragraph 3. Therefore, the Nashville-Davidson County FELOP program satisfies the fourth criteria for Federal enforceability.

The fifth criteria for a state's operating permit program to become Federally enforceable requires that the permitting agency provide EPA and the public with timely notice of the proposal and issuance of such permits, and provide EPA, on a timely basis, with a copy of each draft and final permit intended to be federally enforceable. This process also must provide for an opportunity for public comment on the permit applications prior to issuance of the final permit. Nashville-Davidson County satisfies this criteria by including M.C.L. Section 10.56.040.F, Paragraphs 4 and 5, which require the County to provide a 30 day public comment period and to provide a copy of each draft and final permit to the Administrator. EPA notes that any permit which has not gone through an opportunity for public comment and EPA review in the Nashville-Davidson County FELOP program will not be Federally enforceable.

In addition to requesting approval into the SIP, Nashville-Davidson County has also requested approval of its FELOP program under Section 112(l) of the CAA for the purpose of creating Federally enforceable limitations on the potential to emit of HAP through the issuance of FELOP. Approval under section 112(l) is necessary because the proposed SIP approval discussed above

[1] Various local air pollution programs operate air quality programs under their own regulations which are approved into the SIP. The reader should note that ''State'' operating permits programs encompass those local programs with jurisdiction over only part of a State as well as in Statewide programs.

only extends to the control of criteria pollutants. Federally enforceable limits on criteria pollutants (e.g., VOC's or PM–10) may have the incidental effect of limiting certain HAP listed pursuant to section 112(b).[2] However, section 112 of the Act provides the underlying authority for controlling all HAP emissions.

EPA believes that the five approval criteria for approving FELOP programs into the SIP, as specified in the June 28, 1989, **Federal Register** document, are also appropriate for evaluating and approving the program under section 112(l). The June 28, 1989, document does not address HAP, because it was written prior to the 1990 amendments to section 112, not because it establishes requirements unique to criteria pollutants.

In addition to meeting the criteria in the June 28, 1989, document, a state program that addresses HAP must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the CAA.

EPA plans to codify the approval criteria for programs limiting potential to emit of HAP, such as FELOP programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the CAA. (See 58 FR 62262, November 26, 1993.) EPA currently anticipates that these regulatory criteria, as they apply to FELOP programs, will mirror those set forth in the June 28, 1989, document. The EPA currently anticipates that since FELOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

EPA believes it has authority under section 112(l) to approve programs to limit the potential to emit of HAP directly under section 112(l) prior to this revision to Subpart E. Section 112(l)(5) requires the EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the ''guidance'' referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the severe timing problems posed by impending deadlines set forth in ''maximum achievable control technology'' (MACT) emission standards under section 112 and for submittal of title V permit applications, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue. EPA is therefore approving the Nashville-Davidson County FELOP program so that the County may begin to issue FELOP as soon as possible.

EPA believes that the Nashville-Davidson County FELOP program meets the approval criteria specified in the June 28, 1989 **Federal Register** document and in section 112(l)(5) of the CAA. As discussed previously in this document, the Nashville-Davidson County FELOP program meets the five criteria necessary for Federal enforceability.

EPA believes that the Nashville-Davidson County FELOP program contains adequate authority to assure compliance with section 112(l)(5) requirements. The program meets the third criterion of the June 28, 1989, document because the program does not permit any section 112 requirement to be waived. Sources that become minor through a permit issued pursuant to this program would still be required to meet the section 112 requirements applicable to nonmajor sources.

EPA believes that Nashville-Davidson County has demonstrated that it can provide adequate resources to support the FELOP program. EPA expects that resources will continue to be adequate to administer the portion of the County's minor source operating permit program under which FELOP will be issued, since Nashville-Davidson County has administered a minor source operating permit program for several years. EPA will monitor the County's implementation of its FELOP to ensure that adequate resources are in fact available. EPA also believes that the Nashville-Davidson County FELOP program provides for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in the Nashville-Davidson County FELOP program would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate Federally enforceable limit by the relevant deadline. Finally, EPA believes it is consistent with the intent of section 112 and the CAA for states to provide a mechanism through which sources may avoid classification as a major source by obtaining a Federally enforceable limit on potential to emit.

With the addition of these provisions, the Nashville-Davidson County FELOP program satisfies all the requirements listed in the June 28, 1989, **Federal Register** document. EPA is approving this revision to the Nashville-Davidson County portion of the Tennessee SIP thus making the County's FELOP program Federally enforceable.

**Final Action**

In this action, EPA is approving the Nashville-Davidson County FELOP program. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 26, 1995 unless, by August 28, 1995, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 26, 1995.

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

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. Filing a petition for reconsideration by the Administrator of

[2] The EPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below 112 major source levels.

this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2).)

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

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

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

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

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 112(l) of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action would impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Intergovernmental relations, Particulate matter, Ozone, Sulfur oxides.

Dated: June 23, 1995.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

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

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7671q.

## Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(130) to read as follows:

### § 52.2220 Identification of plan.

* * * * *

(c) * * *

(130) Revisions to minor source operating permit rules for Nashville-Davidson County submitted by the Tennessee Department of Environment and Conservation on November 16, 1994.

(i) Incorporation by reference.

(A) Metropolitan Code of Law (M.C.L.) Chapter 10.56, Section 040, Paragraph F, effective October 4, 1994.

(ii) Other material. None.

[FR Doc. 95–18518 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 52

**[NC–065–1–6431a; FRL–5226–7]**

## Approval and Promulgation of Implementation Plans: Approval of Revisions to the Mecklenburg County Portion of the North Carolina State Implementation Plan (SIP)

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the Mecklenburg County portion of the North Carolina State Implementation Plan (SIP) to allow the Mecklenburg County Department of Environment to issue Federally enforceable local operating permits (FELOP). On November 24, 1993, the Mecklenburg County Department of Environment through the North Carolina Department of Environment, Health, and Natural Resources (DEHNR) submitted a SIP revision fulfilling the requirements necessary to issue FELOP. The submittal conforms with the requirements necessary for a local agency's minor source operating permit program to become federally enforceable. In order to extend the Federal enforceability of local operating permits to hazardous air pollutants (HAP), EPA is also proposing approval of the Mecklenburg County minor source operating permit regulations pursuant to section 112 of the Act.

**DATES:** This final rule will be effective on September 26, 1995 unless adverse or critical comments are received by August 28, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments should be addressed to Scott Miller at the EPA Regional office listed below.

Copies of the material submitted by Mecklenburg County may be examined during normal business hours at the following locations:

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

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

North Carolina Department of Health, Environment and Natural Resources, Air Quality Section, P.O. Box 29535, Raleigh, North Carolina 27626.

**FOR FURTHER INFORMATION CONTACT:** Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental

Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is (404) 347–2864.

**SUPPLEMENTARY INFORMATION:** On November 24, 1993, Mecklenburg County, North Carolina through DEHNR submitted a SIP revision designed to allow Mecklenburg County to issue FELOP which conform to EPA requirements for federal enforceability as specified in a **Federal Register** notice, ''Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules.'' (See 54 FR 22274, June 28, 1989). This voluntary SIP revision allows EPA and citizens under the Act to enforce terms and conditions of local-issued minor source operating permits. Operating permits that are issued under the County's minor source operating permit program that is approved into the State SIP and under section 112(l) will provide federally enforceable limits to an air pollution source's potential to emit. Limiting of a source's potential to emit through federally enforceable operating permits can affect a source's applicability to federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants and federal air toxics requirements.

In the aforementioned June 28, 1989, **Federal Register** document, EPA listed five criteria necessary to make a local agency's minor source operating permit program federally enforceable and, therefore, approvable into the SIP. This revision satisfies the five criteria for federal enforceability of the County's minor source operating permit program.

The first criteria for a local agency's minor source operating permit to become federally enforceable is that the regulations governing permit issuance are approved into the SIP. On November 24, 1993, Mecklenburg County through the DEHNR submitted a SIP revision fulfilling the requirements necessary to make Mecklenburg County's minor source operating permit program federally enforceable. This action will approve these regulations into the North Carolina SIP, thereby, meeting the first criteria for federal enforceability.

The second criteria for a state's operating permit program to become federally enforceable is that the regulations approved into the SIP impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits. Mecklenburg County Air Pollution Control Ordinance (MCAPCO) Regulation 1.5232(b) states that failure to apply for or to act in accordance with the terms, conditions, or requirements of any permit shall be cause for enforcement sanctions in MCAPCO Regulation 1.5300 and Chapter 143, Article 21B of the General Statutes of North Carolina. MCAPCO Regulation 1.5300 lists criminal and civil enforcement remedies that the County may take in the event that an air pollution source violates the terms, conditions, or requirements of the permit. Hence, the second criteria for federal enforceability is met.

The third criteria necessary for Mecklenburg County's operating permit program to be federally enforceable is that the local operating permit program require that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise ''federally enforceable'' (e.g. standards established under sections 111 and 112 of the Act). MCAPCO Regulation 1.5232(b) mandates that approval of construction, modification, or operation of any source shall not affect the responsibility of the owner or operator to comply with applicable portions of the SIP. Therefore, the third criteria for federal enforceability is met.

The fourth criteria for a local agency's operating permit program to become federally enforceable is that limitations, controls, and requirements in the operating permits are quantifiable, and otherwise enforceable as a practical matter. While a determination of what is practically enforceable will generally differ based on process type and emissions, the County has included several regulations designed to ensure that permit limitations are enforceable as a practical matter. MCAPCO Regulation 1.5212(d) requires that upon request an air pollution source prove to the Department that it has complied with air quality emission standards and has been in compliance with federal and state laws and regulations. MCAPCO Regulation 1.5213(b) provides that the Department will attach as a condition of any permit which is issued, a requirement that the applicant prior to construction or operation of a facility under the permit, comply with all lawfully adopted ordinances. MCAPCO Regulation 1.5214 requires that after a permit is issued a source must submit written notification to the Department before it commences operation of the newly permitted activity. Within 90 days after the source notifies the Department, the Department will inspect the source, equipment, process, or device in order to determine compliance with permit conditions and limitations. Therefore, the fourth criteria for federal enforceability is met.

The fifth criteria for a local agency's operating permit program to become federally enforceable is to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be federally enforceable. This process also must provide for an opportunity for public comment on the permit applications prior to issuance of the final permit. MCAPCO Regulation 1.5213(g) requires a 30 day public notice period for every permit issued by the County. In addition, every permit issued by the County goes through a public hearing prior to permit issuance. MCAPCO Regulation 1.5213(h) requires the Department to submit the proposed permit to EPA for review during the 30 day comment period, and also provides that after final permit issuance the Department will submit a copy of the final permit to EPA. Hence, the fifth criteria for federal enforceability is met.

On June 28, 1989 (54 FR 27274), EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of federally enforceable state operating permits (FESOP). Permits issued pursuant to an operating permit program approved into the SIP as meeting these criteria may be considered federally enforceable. The EPA has encouraged states to develop such FESOP programs in conjunction with title V operating permits programs to enable sources to limit their potential to emit to below the title V applicability thresholds. (See the guidance document entitled, ''Limitation of Potential to Emit with Respect to Title V Applicability Thresholds,'' dated September 18, 1992, from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards (OAQPS), Office of Air and Radiation, U.S. EPA.) On November 3, 1993, the EPA announced in a guidance document entitled, ''Approaches to Creating Federally Enforceable Emissions Limits,'' signed by John S. Seitz, Director, OAQPS, that this mechanism could be extended to create federally enforceable limits for emissions of HAP if the program were approved pursuant to section 112(l) of the Act.

In addition to requesting approval into the SIP, Mecklenburg County also requested on July 12, 1994, approval of its minor source operating permit program under section 112(l) of the Act for the purpose of creating federally enforceable limitations on the potential to emit of HAP. Approval under section 112(l) is necessary because the proposed SIP approval discussed above only extends to the control of criteria pollutants. Federally enforceable limits on criteria pollutants (i.e., VOC's or PM–10) may have the incidental effect of limiting certain HAP listed pursuant to section 112(b).[1]

However, section 112 of the Act provides the underlying authority for controlling all HAP emissions.

EPA believes that the five approval criteria for approving FELOP programs into the SIP, as specified in the June 28, 1989 **Federal Register** document, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989, document does not address HAP because it was written prior to the 1990 amendments to section 112, not because it establishes requirements unique to criteria pollutants. Hence, the following five criteria are applicable to FELOP approvals under section 112(l): (1) The program must be submitted to and approved by the EPA; (2) the program must impose a legal obligation on the operating permit holders to comply with the terms and conditions of the permit, and permits that do not conform with the June 28, 1989, criteria or the EPA's underlying regulations shall be deemed not federally enforceable; (3) the program must contain terms and conditions that are at least as stringent as any requirements contained in the SIP, enforceable under the SIP, or any section 112 or other CAA requirement, and may not allow for the waiver of any CAA requirement; (4) permits issued under the program must contain conditions that are permanent, quantifiable, and enforceable as a practical matter; and (5) permits that are intended to be federally enforceable must be issued subject to public participation and must be provided to the EPA in proposed form on a timely basis.

In addition to meeting the criteria in the June 28, 1989, document, a FELOP program that addresses HAP must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

EPA plans to codify the approval criteria for programs limiting potential to emit of HAP, such as FELOP programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the Act. (See 58 FR 62262, November 26, 1993.) EPA currently anticipates that these regulatory criteria, as they apply to FELOP programs, will mirror those set forth in the June 28, 1989, notice. EPA also anticipates that given FELOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

EPA has authority under section 112(l) to approve programs to limit potential to emit of HAP directly under section 112(l) prior to this revision to Subpart E. Section 112(l)(5) requires EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This could be read to suggest that the ''guidance'' referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the severe timing problems posed by impending deadlines set forth in ''maximum achievable control technology'' (MACT) emission standards under section 112 and for submittal of title V permit applications, it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue. Therefore, EPA is approving Mecklenburg County's minor source operating permit program to allow the County to begin issuing FELOPs as soon as possible.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes Mecklenburg County's minor source operating permit program contains adequate authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989, document is met, that is, because the program does not allow for the waiver of any section 112 requirement. Sources that become minor through a permit issued pursuant to this program would still be required to meet section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, EPA believes Mecklenburg County has demonstrated that it can provide for adequate resources to support the minor source operating permit program. EPA expects that since Mecklenburg County has administered a minor source operating permit program for several years, resources will continue to be adequate to administer the minor source operating permit program. EPA will monitor Mecklenburg County's implementation of its FELOP to ensure that adequate resources are in fact available. EPA also believes that Mecklenburg County's minor source operating permit program provides for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in Mecklenburg County's program would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate federally enforceable limit by the relevant deadline. Finally, EPA believes it is consistent with the intent of section 112 and the Act for States to provide a mechanism through which sources may avoid classification as a major source by obtaining a federally enforceable limit on potential to emit.

With the addition of these provisions, Mecklenburg County's minor source operating permit program satisfies all the requirements listed in the June 28, 1989, **Federal Register** document. Therefore, EPA is approving this revision to the Mecklenburg County portion of the North Carolina SIP making the County's minor source operating permit program federally enforceable which will allow the County to issue FELOP.

**Final Action**

In this action, EPA is approving the Mecklenburg County minor source operating permit program. EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be

[1] The EPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.

filed. This action will be effective on September 26, 1995 in the **Federal Register** unless, by August 28, 1995, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 26, 1995.

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

Under Section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the CAA, 42 U.S.C. 7607(b)(2).)

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

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

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

**SIP Action**

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

*D. Unfunded Mandates Reform Act of 1995*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed interim approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: June 23, 1995.

**William A. Waldrop,**

*Regional Administrator.*

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

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7671q.

### Subpart II—North Carolina

2. Section 52.1770 is amended by adding paragraph (c)(70) to read as follows:

**§ 52.1770 Identification of plan.**

* * * * *

(c) * * *

(70) The minor source operating permit program for Mecklenburg County, North Carolina, submitted by the Mecklenburg County Department of Environmental Protection on November 24, 1993, and as part of the Mecklenburg County portion of the North Carolina SIP.

(i) Incorporation by reference.

MCAPCO Regulations 1.5211 through 1.5214, 1.5216, 1.5219, 1.5221, 1.5222, 1.5232, 1.5234, and 1.5306 of the Mecklenburg County portion of the North Carolina SIP adopted June 6, 1994.

(ii) Other material. None.

* * * * *

[FR Doc. 95–18527 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

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## 40 CFR Part 52

**[IN22–4–6825; FRL–5265–2]**

## Approval and Promulgation of an Implementation Plan for Vehicle Miles Traveled; Indiana

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** On November 2, 1994, the United States Environmental Protection Agency (USEPA) proposed to approve a November 17, 1993, request for a State Implementation Plan (SIP) revision, addressing the Lake and Porter County ozone nonattainment area, submitted by the State of Indiana for the purpose of offsetting growth in emissions from growth in vehicle miles traveled (VMT) or number of vehicle trips, and to attain reduction in motor vehicle emissions, in combination with other emission

reduction requirements, as necessary to comply with Reasonable Further Progress (RFP) milestones and attainment requirements of the Clean Air Act (Act). Public comments were solicited on the proposed SIP revision, and on USEPA's proposed rulemaking action. The public comment period ended on December 2, 1994, and one public comment letter was received. This rulemaking action approves, in final, the VMT Offset SIP revision request for Lake and Porter Counties, Indiana as requested by Indiana.

**EFFECTIVE DATE:** This final rulemaking becomes effective on August 28, 1995.

**ADDRESSES:** Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Patricia Morris at (312) 353–8656 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Patricia Morris, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 182(d)(1)(A) of the Act, as amended in 1990 (Act), requires States containing ozone nonattainment areas classified as ''severe'' pursuant to section 181(a) of the Act to adopt transportation control measures (TCMs) and transportation control strategies to offset any growth in emissions from growth in VMT or number of vehicle trips, and to attain reductions in motor vehicle emissions (in combination with other emission reduction requirements) as necessary to comply with the Act's RFP milestones and attainment requirements. The requirements for establishing a VMT Offset program are discussed in the April 16, 1992, General Preamble to Title I of the Act (57 FR 13498), in addition to section 182(d)(1)(A) of the Act.

The VMT Offset provision requires that States submit by November 15, 1992, specific enforceable TCMs and strategies to offset any growth in emissions from growth in VMT or number of vehicle trips sufficient to allow total area emissions to comply with the RFP and attainment requirements of the Act.

As described in the November 2, 1994, proposed rule (see 59 FR 54866, 54867), the USEPA has observed that these three elements (i.e., offsetting growth in mobile source emissions, attainment of the RFP reduction, and attainment of the ozone National Ambient Air Quality Standards (NAAQS)) can be divided into three separate submissions that could be submitted on different dates.

Under this approach, the first element, the emissions offset element, was due on November 15, 1992. The USEPA believes this element is not necessarily dependent on the development of the other elements. The State could submit the emissions growth offset element independent of an analysis of that element's consistency with the periodic reduction and attainment requirements of the Act. Emissions trends from other sources need not be considered to show compliance with this offset requirement. As submitting this element in isolation does not implicate the timing problem of advancing deadlines for RFP and attainment demonstrations, USEPA does not believe it is necessary to extend the statutory deadline for submittal of the emissions growth offset element.

The second element, which requires the VMT Offset SIP to comply with the 15 percent RFP requirement of the Act, was due on November 15, 1993, which is the same date on which the 15 percent RFP SIP itself was due under section 182(b)(1) of the Act. The USEPA believes it is reasonable to extend the deadline for this element to the date on which the entire 15 percent SIP was due, as this allows States to develop the comprehensive strategy to address the 15 percent reduction requirement and assure that the TCM elements required under section 182(d)(1)(A) are consistent with the remainder of the 15 percent demonstration. Indeed, USEPA believes that only upon submittal of the broader 15 percent plan can a State have had the necessary opportunity to coordinate its VMT strategy with its 15 percent plan.

The third element, which requires the VMT Offset SIP to comply with the post-1996 RFP and attainment requirements of the Act, was due on November 15, 1994, the statutory deadline for those broader submissions. The USEPA believes it is reasonable to extend the deadline for this element to the date on which the post-1996 RFP and attainment SIPs are due for the same reasons it is reasonable to extend the deadline for the second element. First, it is arguably impossible for a State to make the showing required by Section 182(d)(1)(A) for the third element until the broader demonstrations have been developed by the State. Moreover, allowing States to develop the comprehensive strategy to address post-1996 RFP and attainment by providing a fuller opportunity to assure that the TCM elements comply with the broader RFP and attainment demonstrations, will result in a better program for reducing emissions in the long term.

On November 17, 1993, Indiana submitted to USEPA documentation to fulfill the first and second elements of the VMT-Offset SIP. A public hearing was held on December 14, 1993, and documentation on the public hearing was submitted to complete the SIP revision request. Indiana does not at this time anticipate the need for additional TCMs to meet the attainment demonstration requirement but will submit any necessary TCMs with the attainment demonstration SIP.

## II. Evaluation of the State Submittal

Section 182(d)(1)(A) of the Act requires the State to offset any growth in emissions from growth in VMT. As discussed in the General Preamble, the purpose is to prevent a growth in motor vehicle emissions from canceling out the emission reduction benefits of the federally mandated programs in the Act. The USEPA interprets this provision to require that sufficient measures be adopted so that projected motor vehicle volatile organic compound (VOC) emissions will never be higher during the ozone season in one year than during the ozone season in the year before. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented. The emissions level at the point of upturn becomes a ceiling on motor vehicle emissions. This requirement applies to projected emissions in the years between the submission of the SIP revision and the attainment deadline, and is above and beyond the separate requirements for the RFP and the attainment demonstrations. The ceiling level is defined, therefore, up to the point of upturn, as motor vehicle emissions that would occur in the ozone season of that year, with VMT growth, if all measures for that area in that year were implemented as required by the Act. When this curve begins to turn up due to growth in VMT or vehicle trips, the ceiling becomes a fixed value. The ceiling line would include the effects of Federal measures such as new motor vehicle standards, phase II RVP controls, and reformulated gasoline, as well as the Act-mandated SIP requirements.

The State of Indiana has demonstrated in its submittal of November 17, 1993, that the predicted growth in VMT in Lake and Porter Counties, Indiana, is not expected to result in a growth in motor vehicle emissions that will negate the effects of the reductions mandated by the Act. Further, Indiana has projected motor vehicle emissions to the year 2007 and, using the most current socioeconomic data, has not predicted an upturn in motor vehicle emissions. In the event that the projected socioeconomic data and associated VMT grow more rapidly than currently predicted, Indiana is required by Section 182(c)(5) to track actual VMT starting with 1996 and every three years thereafter to demonstrate that the actual VMT is equal to or less than the projected VMT. TCMs will be required to offset VMT that is above the projected levels (section 182(c)(5)).

The VMT offset submittal from Indiana dated November 17, 1993, contains the final report ''TCMs to Offset Emissions from VMT Growth in Northwestern Indiana.'' The report used the most current socioeconomic data and the travel network model in conjunction with the MOBILE5a to estimate mobile source emissions to the attainment year of 2007.

This report also documents the progress Indiana has made in evaluating TCMs to reduce growth in VMT and thus reduce emissions. Indiana may choose to take credit for TCM emission reductions as part of the post-1996 RFP requirement or to meet the attainment requirement. Not only has Indiana evaluated the effectiveness and predicted impact of a number of TCMs, but actual implementation of selected TCMs has been ongoing. Several examples are cited in the proposed rule.

These specific TCMs, however, are not a part of the current SIP revision request and are not a required portion of this SIP revision. Thus, Indiana is not currently taking credit for the emission reductions from these TCM measures and the State is not bound to implement or continue to implement any specific TCMs. These measures, however, illustrate Indiana's work in evaluating and implementing TCMs to meet the goals of the Act. Also, the TCMs may be used in subsequent SIP submittals as necessary to meet the post 1996 RFP requirement or the attainment requirement.

Indiana submitted a 15 percent RFP SIP for northwest Indiana to the USEPA in November 1993, but the submittal was found incomplete in a letter dated January 25, 1994. The RFP SIP lacked enforceable regulations and a public hearing. The public hearing was held on March 29, 1994.

On June 26, 1995, Indiana submitted an updated 15 percent SIP which contained all enforceable regulations. Indiana's submitted 15 percent SIP was found complete by the USEPA in a letter dated July 7, 1995. The submittal details the adopted enforceable regulations that have been submitted to support the 15 percent RFP demonstration. The SIP submission contains a menu of adopted emissions reductions measures that the State believes will achieve the 15 percent reduction requirement by November 15, 1996. Also, Indiana is moving forward with implementation of the 15 percent measures including the enhanced inspection and maintenance program. In the submission, Indiana does not rely upon TCMs in order to satisfy the 15 percent reduction requirement. Rather, the majority of the reduction would be obtained from stationary source shutdowns and the enhanced inspection and maintenance program. Indiana believes that TCMs will not be necessary to attain the 15 percent reduction requirement.

The attainment demonstration and post-1996 RFP plans, were submitted on December 5, 1994, and became complete by operation of law under 110(k)(1)(B) on June 5, 1995. Indiana is planning to use the Phase I and II approach to submission of the attainment demonstration and post-1996 RFP as described in the March 2, 1995, memorandum from Mary Nichols. The USEPA is reserving action on the third element of the VMT Offset SIP until such time as the phase I and II attainment submittals are complete.

Indiana has met the first and second elements of the VMT offset SIP requirements of section 182(d)(1)(A). Regarding the first element, Indiana has identified and evaluated TCMs to reduce VMT, and has shown that VMT growth will not result in a growth of motor vehicle emissions that will negate the effects of the reductions required under the Act and that there will not be an upturn of motor vehicle emissions. Regarding the second element, Indiana has submitted a complete 15 percent SIP that does not rely upon TCMs to make its proffered showing that the 15 percent reduction will be achieved. Consequently, USEPA does not believe it is necessary to delay taking action on this second element of the VMT SIP, and that the Agency can at this point rely upon Indiana's submitted 15 percent SIP to make a judgment that TCM's will not be necessary to satisfy the second VMT SIP element. However, if in evaluating the 15 percent SIP for approval it is determined that Indiana would in fact have to implement TCMs to meet the 15 percent RFP requirement, and a subsequent submission of a revised 15 percent SIP is required, EPA would have to reevaluate its approval of the second element of the VMT SIP.

The third requirement is for Indiana to use TCMs as necessary to attain the standard. This third requirement will be submitted with the attainment demonstration SIP and will be addressed in a future **Federal Register** notice.

### III. Public Comments

On November 2, 1994, the USEPA proposed to approve the first and second elements of the Indiana VMT Offset SIP and requested public comment. The public comment period closed on December 2, 1994, and the Natural Resources Defense Council (NRDC) submitted comments on December 2, 1994. The following summarizes NRDC's comments and USEPA's response to these comments:

*Comment 1:* The Act requires TCMs to offset emissions resulting from all growth in VMT above 1990 levels, and USEPA is required by the Act to ensure emission reductions despite an increase in VMT. The legislative history states that ''[t]he baseline for determining whether there has been a growth in emissions due to increased VMT is the level of vehicle emissions that would occur if VMT held constant in the area.'' See H.Rep. No. 101–490, Part I, 101st Cong., 2nd Sess. at 242, and S.Rep. No. 101–228, 101st Cong., 1st Sess. at 44.

*Response:* As discussed in the General Preamble, USEPA believes that section 182(d)(1)(A) of the Act requires the State to ''offset any growth in emissions'' from growth in VMT but not, as suggested by the comment, all emissions resulting from VMT growth (see 57 FR 13498, 13522–13523, April 16, 1992). The purpose is to prevent a growth in motor vehicle emissions from canceling out the emission reduction benefits of the federally mandated programs in the Act. The baseline for emissions is the 1990 level of vehicle emissions and the subsequent reductions in emission levels required to reach attainment. Thus, the anticipated benefits from the mandated measures such as the Federal motor vehicle pollution control program, lower reid vapor pressure, enhanced inspection and maintenance and all other motor vehicle emission control programs are included in the ceiling line calculation used by Indiana in the VMT Offset SIP. Table 13 in the Indiana SIP submittal demonstrates how motor vehicle emissions will decline substantially from 136.63 tons per day (tpd) in 1990 to 25.04 tpd in 2007 and

will not begin to turn up. Emission reductions are expected every year through the year 2007.

The ceiling line approach does not ''tolerate increases in traffic of a magnitude that would wipe out the air quality gains'' as suggested by the comment. In fact, the ceiling line level decreases from year to year as the State implements various control measures and the decreasing ceiling line prevents an upturn in mobile source emissions. Dramatic increases in VMT that could wipe out the benefits of motor vehicle emission reduction measures will not be allowed and will trigger the implementation of TCMs. This prevents mere preservation of the status quo, and ensures emissions reductions despite an increase in VMT such that the rate of emissions decline is not slowed by increases in VMT or number of trips. To prevent future growth changes from adversely impacting emissions from motor vehicles, Indiana is required by section 182(c)(5) to track actual VMT starting with 1996 and every three years thereafter to demonstrate that the actual VMT is equal to or less than the projected VMT. TCMs will be required to offset VMT that is above the projected levels (section 182(c)(5)).

Under the commenter's approach to section 182(d)(1)(A), Indiana would have to offset VMT growth even while vehicle emissions are declining. Although the statutory language could be read to require offsetting any VMT growth, EPA believes that the language can also be read so that only actual emissions increases resulting from VMT growth need to be offset. The statute by its own terms requires offsetting of ''any growth in emissions from growth in VMT.'' It is reasonable to interpret this language as requiring that VMT growth must be offset only where such growth results in emissions increases from the motor vehicle fleet in the area.

While it is true that the language of the legislative history appears to support the commenter's interpretation of the statutory language, such an interpretation would have drastic implications for Indiana if the State were forced to ignore the beneficial impacts of all vehicle tailpipe and alternative fuel controls. Although the original authors of the provision and the legislative history may in fact have intended this result, EPA does not believe that the Congress as a whole, or even the full House of Representatives, believed at the time it voted to pass the 1990 Amendments to the Act that the words of this provision would impose such severe restrictions.

Given the susceptibility of the statutory language to these two alterative interpretations, EPA believes it is the Agency's role in administering the statute to take the interpretation most reasonable in light of the practical implications of such interpretation and the purposes and intent of the statutory scheme as a whole. In the context of the intricate planning requirements Congress established in title I to bring areas towards attainment of the ozone NAAQS, and in light of the absence of any discussion of this aspect of the VMT offset provision by the Congress as a whole (either in floor debate or in the Conference Report), EPA concludes that the appropriate interpretation of section 182(d)(1)(A) requires offsetting VMT growth only when such growth would result in actual emissions increases.

*Comment 2:* Section 182(d)(1)(A) of the Act requires that emissions of oxides of nitrogen ($NO_X$) as well as VOCs resulting from VMT growth must be offset.

*Response:* USEPA disagrees with the commenter's interpretation that section 182(d)(1)(A) requires $NO_x$ emissions from VMT growth to be offset. While that section provides that ''any growth in emissions'' from growth in VMT must be offset, USEPA believes that Congress clearly intended that the offset requirement be limited to VOC emissions. First, section 182(d)(1)(A)'s requirement that a State's VMT TCMs comply with the ''periodic emissions reduction requirements'' of sections 182(b) and (c) the Act indicates that the VMT offset SIP requirement is VOC-specific. Section 182(c)(2)(B), which requires reasonable further progress demonstrations for serious ozone nonattainment areas, provides that such demonstrations will result in VOC emissions reductions; thus, the only ''periodic emissions reduction requirement'' of section 182(c)(2)(B) is VOC-specific. In fact, it is only in section 182(c)(2)(C)—a provision not referenced in section 182(d)(1)(A)—that Congress provided States the authority to submit demonstrations providing for reductions of emissions of VOCs and $NO_X$ in lieu of the SIP otherwise required by section 182(c)(2)(B).

Moreover, the 15 percent periodic reduction requirement of section 182(b)(1)(A)(i) applies only to VOC emissions, while only the separate ''annual'' reduction requirement applies to both VOC and $NO_X$ emissions. USEPA believes that Congress did not intend the terms ''periodic emissions reductions'' and ''annual emissions reductions'' to be synonymous, and that the former does not include the latter. In section 176(c)(3)(A)(iii) of the Act, Congress required that conformity SIPs ''contribute to annual emissions reductions'' consistent with section 182(b)(1) (and thus achieve $NO_X$ emissions reductions), but does not refer to the 15 percent periodic reduction requirement. Conversely, section 182(d)(1)(A) refers to the periodic emissions reduction requirements of the Act, but does not refer to annual emissions reduction requirements that require $NO_X$ reductions. Consequently, USEPA interprets the requirement that VMT SIPs comply with periodic emissions reduction requirements of the Act to mean that only VOC emissions are subject to section 182(d)(1)(A) in severe ozone nonattainment areas.

Finally, USEPA notes that where Congress intended section 182 ozone SIP requirements to apply to $NO_X$ as well as VOC emissions, it specifically extended applicability to $NO_X$. Thus, references to ozone or emissions in general in section 182 do not on their own implicate $NO_X$. For example, in section 182(a)(2)(C), the Act requires States to require preconstruction permits for new or modified stationary sources ''with respect to ozone''; Congress clearly did not believe this reference to ozone alone was sufficient to subject $NO_X$ emissions to the permitting requirement, since it was necessary to enact section 182(f)(1) of the Act, which specifically extends the permitting requirement to major stationary sources of $NO_X$. Since section 182(d)(1)(A) does not specifically identify $NO_X$ emissions requirements in addition to the VOC emissions requirements identified in the provision, USEPA does not believe States are required to offset $NO_X$ emissions from VMT growth in their section 182(d)(1)(A) SIPs.

## IV. Final Rulemaking Action

Based on the State's submittal request and in consideration of the public comments received in response to the proposed rule, USEPA is approving the SIP revision submitted by the State of Indiana as satisfying the first two of the three VMT offset plan requirements.

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., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or

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

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

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

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 September 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (see Section 307(b)(2)).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

Dated: July 14, 1995.

**Valdas V. Adamkus,**

*Regional Administrator.*

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

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7671q.

## Subpart P—Indiana

2. Section 52.777 is amended by adding paragraph (h) to read as follows:

### § 52.777 Control Strategy: Photochemical oxidents (hydrocarbons).

* * * * *

(h) On November 17, 1993, Indiana submitted two of three elements required by section 182(d)(1)(A) of the Clean Air Amendments of 1990 to be incorporated as part of the vehicle miles traveled (VMT) State Implementation Plan intended to offset any growth in emissions from a growth in vehicle miles traveled. These elements are the offsetting of growth in emissions attributable to growth in VMT which was due November 15, 1992, and, any transportation control measures (TCMs) required as part of Indiana's 15 percent reasonable further progress (RFP) plan which was due November 15, 1993. Indiana satisfied the first requirement by projecting emissions from mobile sources and demonstrating that no increase in emissions would take place. Indiana satisfied the second requirement by determining that no TCMs were required as part of Indiana's 15 percent RFP plan.

[FR Doc. 95–18521 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

### 40 CFR Part 52

**[WI49–01–6738a; FRL–5254–4]**

## Approval and Promulgation of Implementation Plans; Wisconsin

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The United States Environmental Protection Agency (USEPA) approves revisions to Wisconsin's State Implementation Plan (SIP) for ozone which were submitted to the USEPA on April 17, 1990, and June 30, 1994, and supplemented on July 15, 1994. Included in these revisions is a volatile organic compound (VOC) regulation which establishes reasonably available control technology (RACT) for screen printing facilities. Additionally, the State has submitted current negative declarations for pre-1990 Control Technology Guideline (CTG) categories for which Wisconsin does not have rules as well as a list of major sources affected by the 13 CTG categories that USEPA is required to issue pursuant to sections 183(a), 183(b)(3) and 183(b)(4) of the Clean Air Act (Act). These revisions were submitted to address, in part, the requirement of section 182(b)(2)(B) of the Act that States adopt RACT regulations for sources covered by pre-1990 CTG documents, and the requirement of section 182(b)(2)(C) of the Act that States revise their SIPs to establish RACT regulations for major sources of VOCs for which the USEPA has not issued a 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 September 26, 1995 unless an adverse comment is received by August 28, 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) 886–6036.

**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)(B) requires that States adopt RACT regulations for sources covered by pre-1990 CTG documents. Section 182(b)(2)(C) 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).

### Negative Declarations

Wisconsin has not promulgated RACT regulations for several pre-1990 CTG categories because there are no sources located in the ozone nonattainment areas that would be affected. Therefore, to satisfy the requirement of section 182(b)(2)(B), the State is required to officially certify that there are currently no sources in the nonattainment areas that would be covered by these categories. The State submitted current negative declarations for the following categories on April 17, 1990, and June 30, 1994: (1) leaks from petroleum refinery equipment; (2) manufacture of synthesized pharmaceutical products; (3) manufacture of pneumatic rubber tires; (4) automobile and light duty truck manufacturing; (5) fire truck and emergency response vehicle manufacturing; (6) manufacture of high-density polyethylene, polypropylene, and polystyrene resins, a.k.a. polymer manufacturing; (7) leaks from synthetic organic chemical and polymer manufacturing equipment; (8) air oxidation processes at synthetic organic chemical manufacturing industries; and (9) equipment leaks from natural gas/gasoline processing plants.

### List of Major Sources Subject to Post-1990 CTG Source Categories

Pursuant to sections 183(a), 183(b)(3) and 183(b)(4) of the Act, USEPA was required to develop CTG documents for 13 source categories by November 15, 1993. A list of these source categories, contained in Appendix E to the General Preamble, was published in the **Federal Register** on April 28, 1992 (57 FR 18070). The State was required to submit a list of major sources that would be subject to these post-1990 CTG documents. On June 30, 1994, Wisconsin submitted this list which included facilities in four source categories: (1) cleanup solvents; (2) offset lithography; (3) plastic parts coating; and (4) wood furniture coating.

### Screen Printing

Because the USEPA has not issued a CTG for screen printing, the State of Wisconsin developed a non-CTG regulation for this category. This regulation was submitted to the USEPA on June 30, 1994, and supplemented on July 15, 1994. The Wisconsin rule applies to screen printing facilities which: 1) are located in the counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington or Waukesha and have maximum theoretical emissions of VOCs from all screen printing units greater than 25 tons per year, or 2) are located in the counties of Kewaunee, Manitowoc, or Sheboygan and have maximum theoretical emissions of VOCs from all screen printing units greater than 100 tons per year. Sources are required to achieve final compliance with this regulation no later than May 31, 1995.

In its rule, Wisconsin establishes a general emission limit of 3.3 pounds of VOC per gallon of ink or coating, excluding water, as applied. This limit is applicable to all printing operations at screen printing facilities, except for those using special purpose inks and coatings or those involved in roll coating operations.

Wisconsin's rule defines special purpose inks and coatings as those inks and coatings which are conductive; used to print ink transfers (decals); or designed to resist or withstand any of the following: more than 2 years of outdoor exposure; exposure to chemicals, solvents, acids, detergent, oil products, or cosmetics; temperatures in excess of 170 F; vacuum forming; embossing; or molding. The emissions limit established in the Wisconsin rule for special purpose inks and coatings is 6.7 pounds per gallon, excluding water, as delivered to an applicator. Wisconsin's rule establishes a limit of 6.7 pounds per gallon for roll coating operations occurring at screen printing facilities.

Additionally, for screen reclamation processes, the Wisconsin rule establishes a limit of 0.24 kilograms per square meter (0.050 pounds of VOC per square foot) of screen reclaimed, calculated on a daily average basis for each day of operation.

With respect to recordkeeping requirements, the regulation requires sources to collect and record the following information: a unique name or identification number for each coating, as applied; the VOC content of each coating, as applied, in units of pounds of VOC per gallon, excluding water; the daily average VOC emission rate from screen reclamation in kilograms per square meter (pounds per square foot) of screen reclaimed; the amount of VOCs emitted during the day from screen reclamation in kilograms (pounds); and the total surface area of screen reclaimed during the day in square meters (square feet).

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;'' South Coast Air Quality Management District rule 1130, as approved in the **Federal Register** on September 29, 1993 (58 FR 50884); and Bay Area Management District rule 8–20 as approved in the **Federal Register** on March 22, 1995 (60 FR 15062). The USEPA has found that the rule meets the requirements applicable to ozone and is, therefore, approvable for incorporation into the State's ozone SIP. A more complete discussion of the USEPA's review of the State's regulation is contained in a technical support document dated April 7, 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 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 September 26, 1995, unless USEPA receives adverse or critical comments by August 28, 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** notice which withdraws this final action. All public comments received will then be addressed in a subsequent final rulemaking notice. 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 September 26, 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. section 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. sections 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 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

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 September 26, 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: June 20, 1995.

**David A. Ullrich,**

*Acting Regional Administrator.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7671q.

## Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(82) to read as follows:

### § 52.2570 Identification of plan.

* * * * *

(c) * * *

(82) Revisions to the ozone State Implementation Plan (SIP) were submitted by the Wisconsin Department of Natural Resources on April 17, 1990, and June 30, 1994, and supplemented on July 15, 1994. Included in these revisions is a volatile organic compound (VOC) regulation which establishes reasonably available control technology (RACT) for screen printing facilities. Additionally, the State submitted current negative declarations for pre-1990 Control Technology Guideline (CTG) categories for which Wisconsin does not have rules as well as a list of major sources affected by the 13 CTG categories that USEPA is required to issue pursuant to sections 183(a), 183(b)(3) and 183(b)(4) of the Clean Air Act (Act).

(i) Incorporation by reference. The following sections of the Wisconsin Administrative Code are incorporated by reference.

(A) NR 422.02(11m), (21s), (41p), (41s), (41v) and (42m) as created and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994. NR 422.02(32) as amended and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994.

(B) NR 422.03(4m) as created and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994.

(C) NR 422.145 as created and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994.

(D) NR 439.04(4)(intro.) and (5)(a) as amended and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994.

(ii) Additional material.

(A) On April 17, 1990, and June 30, 1994, Wisconsin submitted negative declarations for the following source categories: Leaks from petroleum

refinery equipment; Manufacture of synthesized pharmaceutical products; Mmanufacture of pneumatic rubber tires; Automobile and light duty truck manufacturing; Fire truck and emergency response vehicle manufacturing; Manufacture of high-density polyethylene, polypropylene, and polystyrene resins, a.k.a. polymer manufacturing; Leaks from synthetic organic chemical and polymer manufacturing equipment; Air oxidation processes at synthetic organic chemical manufacturing industries; and Equipment leaks from natural gas/gasoline processing plants. These negative declarations are approved into the Wisconsin ozone SIP.

(B) On June 30, 1994, Wisconsin submitted a list of facilities subject to the post-enactment source categories listed in Appendix E to the General Preamble. 57 FR 18070, 18077 (April 28, 1992). The list included facilities covered by the source categories cleanup solvents, offset lithography, plastic parts coating, and wood furniture coating. This list is approved into the Wisconsin ozone SIP.

[FR Doc. 95–18523 Filed 7–27–95; 8:45 am]
BILLING CODE 6560–50–P

## 40 CFR Part 61

**[FRL–5266–2]**

## Asbestos NESHAP Clarification of Intent

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of clarification.

**SUMMARY:** On November 20, 1990, the **Federal Register** published the Environmental Protection Agency's (the Agency's) revision of the National Emission Standard for Hazardous Air Pollutants for Asbestos (asbestos NESHAP), 40 CFR part 61, subpart M. 55 FR 48406. Since the publication of this revision, EPA has received several inquiries from municipalities regarding whether the ''residential building exemption'' from the asbestos NESHAP applies to the demolition or renovation of isolated residential buildings with four or fewer dwelling units (''small residential buildings'') that have been declared safety hazards or public nuisances by local governments. EPA is publishing this notice to clarify that, in EPA's opinion, the demolition or renovation of an isolated small residential building by any entity is not covered by the asbestos NESHAP. This notice does not affect EPA's policy regarding demolition by fire. However, EPA also believes that the demolition or renovation of multiple (more than one) small residential buildings on the same site by the same owner or operator (or owner or operator under common control) is covered by the asbestos NESHAP.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tom Ripp, United States Environmental Protection Agency (2223A), 401 M Street, SW., Washington, DC 20460, telephone (202) 564–7003.

**SUPPLEMENTARY INFORMATION:** This clarification does not supersede, alter, or in any way replace the existing Asbestos NESHAP. This notice is intended solely as guidance and does not represent an action subject to judicial review under section 307(b) of the Clean Air Act or section 704 of the Administrative Procedure Act.

### I. The Asbestos NESHAP and the ''Residential Building Exemption''

On April 6, 1973, the Agency published its initial NESHAP for asbestos (38 FR 8820) after determining that asbestos was associated with asbestosis and certain cancers. The initial asbestos NESHAP covered ''any institutional, commercial and industrial building (including apartment buildings having more than four dwelling units), structure, facility, installation or portion thereof * * *'' 38 FR 8829 (codified at 40 CFR 61.22(d) (1973)). The NESHAP did not cover individual residential buildings containing four or fewer dwelling units. EPA based this ''residential building exemption'' on a National Academy of Sciences' Report which stated ''[i]n general, single-family residential structures contain only small amounts of asbestos insulation.'' EPA stated that apartment houses with four or fewer dwelling units were considered to be equivalent to single-family residential structures. 38 FR 8821.

Since that time, EPA has revised the asbestos NESHAP on several occasions. EPA has not substantially revised the exemption for small residential buildings. However, EPA has stated that residential buildings demolished or renovated as part of larger projects, for instance, highway construction projects, were not exempt from the NESHAP. *See* Letter from John S. Seitz, Director, Stationary Source Compliance Division, U.S. EPA to Thomas S. Hadden, Supervisor, Division of Air Pollution Control, Ohio EPA, dated March 15, 1989; letter from Ann Pontius, U.S. EPA Region 5 to Thomas Hadden, dated September 28, 1988; letter from David Kee, Air Section, U.S. EPA to Richard Larson, Minneapolis Housing and Redevelopment Authority, dated May 16, 1973.

### II. The 1990 Revisions to the Asbestos NESHAP

On November 20, 1990, EPA published a revision to the asbestos NESHAP. 55 FR 48406. The purpose of the revision was ''to enhance enforcement and promote compliance with the current standard without altering the stringency of existing controls.'' *Id.* The revisions revised and added several definitions in order to clarify the requirements of the NESHAP. The preamble accompanying the revisions also contained clarifying information.

In particular, the 1990 revisions clarified the definition of ''facility'' to include:

> Any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units) * * *

*Id.* at 48415 (codified at 40 CFR 61.141). The 1990 amendments also added a definition of ''installation'' that stated:

> Installation means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).

*Id.* (codified at 40 CFR 61.141). In responding to comments regarding the ''residential building exemption,'' the preamble noted that:

> EPA does not consider residential structures that are demolished as part of a commercial or public project to be exempt from this rule. For example, the demolition of one or more houses as part of an urban renewal project, a highway construction project, or a project to develop a shopping mall, industrial facility, or other private development would be subject to the NESHAP. * * * The owner of a home that renovates his house or demolishes it to construct another house is not to be subject to the NESHAP.

*Id.* at 48412.[1] Further, in response to a comment asking whether a group of residential buildings at one location would be covered by the rule, the preamble stated:

> A group of residential buildings under the control of the same owner or operator is considered an installation according to the definition of ''installation'' and is therefore covered by the rule.

[1] EPA considers demolitions planned at the same time or as part of the same planning or scheduling period to be part of the same project. In the case of municipalities, a scheduling period is often a calendar year or fiscal year or the term of a contract.

*Id.*

### III. Programs to Demolish or Renovate Residential Buildings

Since the publication of the 1990 revisions to the asbestos NESHAP, certain questions have arisen regarding whether demolitions or renovations of residential homes that are demolished or renovated by municipalities for reasons of public health, welfare or safety (''nuisance abatement demolitions'') are covered by the asbestos NESHAP.[2] Several municipalities have stated that they believe such demolitions or renovations to be excluded from the NESHAP under the residential building exemption. Municipalities have also stated that EPA officials have been inconsistent in their determinations of this issue. In particular, officials from several municipalities in Florida have asked EPA to issue a notice clarifying EPA's interpretation of the asbestos NESHAP with regard to this issue. In addition, the House of Representatives Report accompanying H.R. 4624 (House Report 103–555, reported by the House Appropriations Committee), also noted these allegedly inconsistent interpretations and directed EPA to issue a notice of clarification that a nuisance abatement demolition or renovation does not subject an otherwise exempt structure to the asbestos NESHAP regulations. In an effort to clarify this issue for the regulated community, EPA is presenting this notice giving its interpretation of the NESHAP with regard to this issue.

### IV. EPA Interpretation

EPA believes that individual small residential buildings that are demolished or renovated are not covered by the asbestos NESHAP. This is true whether the demolition or renovation is performed by agents of the owner of the property or whether the demolition or renovation is performed by agents of the municipality. EPA believes that the residential building exemption applies equally to an individual small residential building regardless of whether a municipality is an ''owner or operator'' for the purposes of the demolition or renovation. EPA believes that the exemption is based on the type of building being demolished or renovated and the type of demolition or renovation project that is being undertaken, not the entity performing or controlling the demolition or renovation.

However, EPA believes that the residential building exemption does not apply where multiple (more than one) small residential buildings on the same site[3] are demolished or renovated by the same owner or operator as part of the same project or where a single residential building is demolished or renovated as part of a larger project that includes demolition or renovation of non-residential buildings. The definition of facility specifically includes ''any residential structure, installation or building'' but excludes only ''residential *buildings* having four or fewer dwelling units'' [emphasis added]. *Id.* at 48415. Specifically not excluded from the definition of facility were residential *installations.* EPA believes that the fact that the residential building exemption is limited to residential *buildings*, and does not include residential *installations*, shows that the residential building exemption was not designed to exempt from the NESHAP demolitions or renovations of multiple buildings at a single site by the same owner or operator. Moreover, to the extent the regulations are ambiguous, EPA believes the language of the preamble to the 1990 regulations quoted above makes clear that the Agency interpreted the residential building exemption not to include the demolition of a group of residential buildings on the same site under the control of the same owner or operator. The preamble also notes that demolitions of residential buildings as a part of larger demolition projects (e.g. construction of a shopping mall) are not excluded from the NESHAP. EPA believes that this interpretation is consistent with the original purpose of the residential building exemption, which was to exempt demolitions or renovations involving small amounts of asbestos. EPA does not believe the residential building exemption was designed to exempt larger demolitions or renovations on a particular site, even where small residential buildings are involved.[4]

While this notice clarifies EPA's belief that certain demolitions or renovations performed by municipalities are not subject to the asbestos NESHAP, EPA encourages municipalities (and other owners and operators) to perform such demolitions or renovations in a manner that provides appropriate consideration for any potential adverse health impacts to the public. This notice applies only to the Federal asbestos NESHAP. Other Federal, State or local agency regulations may apply.

Dated: July 17, 1995.

**Richard Wilson,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 95–18620 Filed 7–27–95; 8:45 am]

**BILLING CODE 6560–50–P**

[2] Demolition of such homes typically occur after a municipality orders a building condemned for public health or safety reasons (e.g. condemnation of a building that is abandoned and/or in danger of collapse). This type of demolition does not include demolitions of buildings for the purpose of building public facilities like highways or sports arenas.

[3] The term ''site'' is not defined in the regulations and EPA does not intend to provide any determination of the boundaries of a ''site'' in today's clarification. However, to provide guidance, EPA notes that a ''site'' should be a relatively compact area. In EPA's view, an entire municipality, or even a neighborhood in a municipality, should not be considered a single site. Where an area is made up of multiple parcels of land owned and operated by various parties, EPA believes that parcels on the same city block may be considered as a single site. (Where a site can not be easily defined as a city block, the site should be a comparably compact site. In any event, the local government should use common sense when applying this guide.) Obviously, EPA believes that if a demolition project involves the demolition of several contiguous city blocks, the entire area could be considered a site. However, EPA believes that demolition of two individual residences separated by several city blocks should not be considered a demolition on a single site. In EPA's view, the area of a site may be larger where the area is owned and operated as a unitary area by a single owner/operator (e.g. a shopping mall or amusement park).

[4] EPA notes that 40 CFR 61.19 forbids owners and operators from attempting to circumvent any NESHAPs by carrying out an operation in a piecemeal fashion to avoid coverage by a standard that applies only to operations larger than a specified size.

## 40 CFR Part 81

**[UT22–1–6925a; FRL–5265–5]**

## Designation of Area for Air Quality Planning Purposes; Utah; Designation of Ogden City $PM_{10}$ Nonattainment Area

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

**ACTION:** Direct final rule.

**SUMMARY:** In this notice, EPA is revising the $PM_{10}$ (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) National Ambient Air Quality Standards (NAAQS) designation for Ogden City, a portion of Weber County, Utah. Previously, consistent with section 107(d)(3)(A) of the Act, EPA notified the Governor of Utah that Weber County, Utah should be redesignated from unclassifiable to nonattainment for $PM_{10}$. The redesignation is based upon violations of the $PM_{10}$ NAAQS which were monitored between January 1991 and January 1993.

**DATES:** This final rule will become effective on September 26, 1995 unless adverse comments are received by August 28, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch, EPA Region VIII, at the address listed below. Information supporting this action can be found at the following location: EPA Region VIII, Air Programs Branch, 999 18th Street, 3rd Floor, South Terrace, Denver, Colorado 80202–2466.

The information may be inspected between 8 a.m. and 4 p.m., on weekdays, except for legal holidays. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Lee Hanley, Air Programs Branch, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 293–1760.

**SUPPLEMENTARY INFORMATION:**

## A. General

The EPA is authorized to initiate redesignation of areas (or portions thereof) as nonattainment for $PM_{10}$ pursuant to section 107(d)(3) of the Act, on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.

Following the process outlined in section 107(d)(3), on July 14, 1994, the Administrator of EPA Region VIII requested that the Governor of Utah recommend a $PM_{10}$ nonattainment designation for Weber County based upon six exceedances of the 24-hour $PM_{10}$ NAAQS recorded between January 1991 and January 1993, ranging from 156 to 182 μg/m3. Under section 107(d)(3)(B), the Governor of Utah was required to submit to EPA the designation he considered appropriate for Weber County within 120 days after EPA's notification. The Governor submitted a response recommending redesignation of Ogden City, Utah to nonattainment on January 9, 1995. Ogden City is within Weber County, but its boundaries are not coextensive with those of Weber County.

Section 107(d)(1)(A) sets out definitions of nonattainment, attainment, and unclassifiable. A nonattainment area is defined as any area that does not meet (or that significantly contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for $PM_{10}$.[1] Further, section 107(d)(1)(A)(i) provides that a nonattainment area shall consist of that area violating the $PM_{10}$ NAAQS or contributing significantly to violations in a nearby area. Generally, the $PM_{10}$ nonattainment area boundaries are presumed to be, as appropriate, the county, township, or municipal subdivision in which the ambient particulate monitor recording the $PM_{10}$ violations is located. EPA has presumed that this would include both the area violating the $PM_{10}$ NAAQS and any area significantly contributing to the violations. However, a State may demonstrate that a boundary other than the county perimeter or municipal boundary may be more appropriate. Thus, in determining the appropriate boundaries for the nonattainment area, EPA has considered not only the area where the violations of the $PM_{10}$ NAAQS are occurring, but nearby areas which significantly contribute to such violations. Based on the information provided by the Governor, including monitoring data, EPA believes that the nonattainment boundaries submitted by the Governor are appropriate at this time.

**Note:** The boundaries of the nonattainment area may be adjusted as a result of analyses made during the SIP development process.

## B. Background for $PM_{10}$

On July 1, 1987, the EPA revised the NAAQS for particulate matter (52 FR 24634), replacing total suspended particulates as the indicator for particulate matter with a new indicator called $PM_{10}$, that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. At the same time, EPA set forth the regulations for implementing the revised particulate matter standards and announced EPA's State Implementation Plan (SIP) development policy, elaborating $PM_{10}$ control strategies necessary to assure attainment and maintenance of the $PM_{10}$ NAAQS (see generally 52 FR 24672). The EPA adopted a $PM_{10}$ SIP development policy dividing all areas of the country into three categories based upon their probability of violating the new NAAQS: (1) Areas with a strong likelihood of violating the new $PM_{10}$ NAAQS and requiring substantial SIP adjustment were placed in Group I; (2) areas that might well have been attaining the $PM_{10}$ NAAQS and whose existing SIPs most likely needed less adjustment were placed in Group II; and (3) areas with a strong likelihood of attaining the $PM_{10}$ NAAQS and, therefore, needing adjustments only to their preconstruction review program and monitoring network were placed in Group III (52 FR 24672, 24679–24682). At that time, Ogden City was categorized as a Group III area.

Pursuant to section 107(d)(4)(B) of the Act, areas previously identified as Group I and other areas which had monitored violations of the $PM_{10}$ NAAQS prior to January 1, 1989, were, by operation of law upon enactment of the 1990 Amendments, designated nonattainment for $PM_{10}$. All other areas of the Country, such as the Ogden City area, were similarly designated unclassifiable for $PM_{10}$ (see section 107(d)(4)(B)(iii) of the Act; 40 CFR 81.327 (1992) as amended by 57 FR 56762, 56772 (Nov. 30, 1992) ($PM_{10}$ designations for Utah).) After EPA adopted the $PM_{10}$ NAAQS, EPA identified and listed the Group I and Group II areas in a **Federal Register** document published on August 7, 1987, (52 FR 29383). In that document, EPA indicated that Group III areas consisted of that portion of a State not placed in Group I or II. Descriptions of the areas identified as Group I and II areas were later clarified in a **Federal Register** document dated October 31, 1990 (55 FR 45799). That notice also identified Group II areas which violated the standards prior to January 1, 1989. EPA announced all areas which were designated nonattainment by operation of law for $PM_{10}$ upon enactment of the 1990 Amendments in a **Federal Register** document dated March 15, 1991 (56 FR 11101). In addition, EPA has published a follow-up document correcting the boundaries and designations of some of the areas in light of comments received addressing the March 1991 document (see 56 FR 37654 (August 8, 1991).) Formal codification in 40 CFR part 81 of those areas designated nonattainment for $PM_{10}$ by operation of law upon enactment was announced in a **Federal Register** document dated November 6, 1991, (56 FR 56694). The November 6, 1991 **Federal Register** document was subsequently amended on November 30, 1992 (57 FR 56762).

## II. Final Action

As noted above, pursuant to section 107(d)(3) of the Act, EPA is authorized to initiate the redesignation of areas as nonattainment for $PM_{10}$. Based on six exceedances of the 24-hr $PM_{10}$ NAAQS recorded between January 1991 and January 1993, EPA notified the Governor of Utah on July 14, 1994, that the air quality designation for Weber County should be revised from unclassifiable to nonattainment for $PM_{10}$ (see 40 CFR 50.6.). In response to EPA's July 14, 1994, letter, EPA received a letter dated January 9, 1995, from the Governor of Utah requesting that Ogden City, in a portion of Weber County,

[1] The EPA has construed the definition of nonattainment area to require some material or significant contribution to a violation in a nearby area. The Agency believes it is reasonable to conclude that something greater than a molecular impact is required.

Utah, be redesignated as nonattainment for $PM_{10}$. EPA is taking final action to redesignate Ogden City, Utah to nonattainment for $PM_{10}$.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to redesignate the area to nonattainment should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 **Federal Register** (59 FR 24054), this action will be effective September 26, 1995 unless, by August 28, 1995, adverse or critical comments are received.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 26, 1995.

## III. Significance of This Action for Ogden City, Utah

Ogden City is being redesignated as a moderate $PM_{10}$ nonattainment area. Utah must submit an implementation plan to EPA for this area within 18 months after the effective date of this nonattainment redesignation. The plan must meet the requirements of Part D, Title I of the Act (see section 189(a)(2)(B) of the Act).

The Clean Air Act provides that the plan for the area must contain, among other things, the following requirements:

1. Either a demonstration (including air quality modeling) that the plan will provide for attainment of the $PM_{10}$ NAAQS as expeditiously as practicable, but no later than the end of the sixth calendar year after the area's designation as nonattainment, or a demonstration that attainment by such date is impracticable;

2. Provisions to ensure that reasonably available control measures (including reasonably available control technology) are implemented within 4 years of the redesignation;

3. A permit program meeting the requirements of section 173 governing the construction and operation of new and modified major stationary sources of $PM_{10}$; and

4. Quantitative milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 171(l), toward timely attainment.

See. *e.g,* sections 188(c), 189(a), 189(c) and 172(c) of the Act. EPA has issued detailed guidance on the statutory requirements applicable to moderate $PM_{10}$ nonattainment areas. (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).)

In taking final action to redesignate Ogden City as nonattainment, EPA is also establishing a date by which the State must submit the contingency measures required by section 172(c)(9) of the Act (see 57 FR 13498 at 13510–13512 and 13543–13544). Section 172(b) of the Act provides that such date shall not be later than 3 years from the date of the nonattainment redesignation. The due date established for submittal of the contingency measures is 18 months from this redesignation. This due date coincides with the due date for the rest of the moderate $PM_{10}$ nonattainment area SIP.

## VI. Other Regulatory Requirements

### *A. Regulatory Flexibility Act*

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

Redesignation of an area to nonattainment under section 107(d)(3) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the planning status of a geographical area and does not in itself, impose any regulatory requirements on sources. To the extent that the State must adopt new regulations based on the area's nonattainment status, EPA will review the effect of those actions on small entities at the time the State submits those regulations. I certify that approval of the redesignation request will not affect a substantial number of small entities.

### *B. Unfunded Mandates*

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments in the aggregate, or for the private sector, in any one year. Redesignation of an area to nonattainment under section 107(d)(3) of the Clean Air Act affects the air quality planning status of an area and does not, in itself, impose any regulatory requirements on sources and, therefore, does not impose any mandates or costs on the private sector. Redesignation of an area to nonattainment, however, does trigger an obligation of the State to develop, adopt and submit to EPA certain State Implementation Plan revisions under part D of title I of the Clean Air Act. EPA has determined that the cost to the State government of developing, adopting and submitting any necessary State Implementation Plan revisions will not exceed $100 million. Thus, today's rule

is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because only the State government has to take any action as a result of today's rule.

*C. Petition Language*

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 September 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**Executive Order 12866**

The OMB has exempted this action from the requirements of Section 6 of Executive Order 12866.

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 19, 1995.

**Jack McGraw,**

*Acting Regional Administrator.*

40 CFR part 81 is amended as follows:

## PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

2. In § 81.345 the table for Utah–PM–10 Nonattainment Areas is amended by adding an entry for Weber County to read as follows:

**§ 81.345 Utah.**

* * * * *

Utah–PM–10 Nonattainment Areas

| Designated area | Designation date | Designation type | Classification date | Classification type |
|---|---|---|---|---|
| * * | * | * | * | * |
| Ogden Area Weber County (part) city of Ogden. | September 26, 1995 | Nonattainment | September 26, 1995 | Moderate. |
| * * | * | * | * | * |

* * * * *

[FR Doc. 95–18520 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 82

**[FRL–5266–4]**

## Protection of Stratospheric Ozone; Acceptable Substitutes for the Significant New Alternatives Policy (SNAP) Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of acceptability.

**SUMMARY:** This notice expands the list of acceptable substitutes for ozone depleting substances (ODSs) under the Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the amended Clean Air Act of 1990, which requires EPA to evaluate substitutes for the ODSs, and regulate the use of substitutes where other alternatives exist that reduce overall risk to human health and the environment. Through these evaluations, SNAP generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors.

On March 18, 1994, EPA promulgated its plan for administering the SNAP program, and issued decisions on the acceptability and unacceptability of a number of substitutes (59 FR 13044). In today's Notice, EPA issues decisions on the acceptability of substitutes not previously reviewed by the Agency. The intended effect of this action is to expedite movement away from ozone depleting compounds. To arrive at determinations on the acceptability of substitutes, the Agency completed a cross-media sector end-use screening assessment of risks to human health and the environment.

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

**ADDRESSES:** Information relevant to this notice is contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Agency, 401 M Street SW., Washington, D.C. 20460. Telephone: (202) 260–7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Levy at (202) 233–9727 or fax (202) 233–9577, U.S. EPA, Stratospheric Protection Division, 401 M Street SW., Mail Code 6205J, Washington, D.C. 20460.

**SUPPLEMENTARY INFORMATION:**

I. Section 612 Program
A. Statutory Requirements
B. Regulatory History
II. Listing of Acceptable Substitutes
A. Refrigeration and Air Conditioning
B. Fire Suppression and Explosion Protection
C. Medical Sterilants
III. Substitutes Pending Review
IV. Additional Information
Appendix A: Summary of Acceptable and Pending Decisions

### Section 612 Program

*Statutory Requirements*

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA is referring to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

• *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional 6 months.

• *90-day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or *existing* chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

• *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

• *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

*Regulatory History*

On March 18, 1994, EPA published the Final Rulemaking (FRM) (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in the final rule for the SNAP program (59 FR 13044), EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Consequently, EPA is adding substances to the list of acceptable alternatives without first requesting comment on new listings.

EPA does, however, believe that notice-and-comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from either the list of prohibited or acceptable substitutes. Updates to these lists are published as separate notices of rulemaking in the **Federal Register**.

The Agency defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators or end-users, when they are responsible for introducing a substitute into commerce.

EPA published Notices listing acceptable alternatives on August 26, 1994, and January 13, 1995, and published a Notice of Proposed Rulemaking restricting the use of certain substitutes on September 26, 1994.

## II. Listing of Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes for class I substances in the following industrial sectors: refrigeration and air conditioning, foam blowing, fire suppression and explosion protection; sterilants. These decisions represent substitutes not previously reviewed and add to the lists of acceptable substitutes under SNAP. For copies of the full list, contact the EPA Stratospheric Protection Hotline at the number listed in Section IV of this Notice.

Parts A through C below present a detailed discussion of the substitute listing determinations by major use sector. Tables summarizing listing decisions in this Notice are in Appendix A. The comments contained in Appendix A provide additional information on a substitute, but like the listings themselves, are not regulatory in nature. Thus, adherence to recommendations in the comments are not mandatory for use of a substitute. In addition, the comments should not be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of acceptable substitutes to apply all comments to their use of these substitutes. In many instances, the comments simply allude to sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

*A. Refrigeration and Air Conditioning*

Please refer to the final SNAP rule for detailed information pertaining to the designation of end-uses, additional requirements imposed under sections 608 and 609, and other information related to the use of alternative refrigerants.

1. Acceptable

a. Volatile Methylsiloxanes. *Octamethylcyclotetrasiloxanes and decamethylcyclopentasiloxanesare acceptable as substitutes for CFC–11, CFC–12, CFC–113, CFC–114, CFC–115 in new and retrofitted heat transfer systems.* This class of compounds was reviewed under the risk screen for solvent cleaning and was found acceptable. That end-use is generally more emissive than heat transfer uses. Thus, EPA anticipates that VMS will pose lower risk in this end-use.

b. Water. *Water is acceptable as a substitute for CFC–11, CFC–12, CFC–113, CFC–114, and CFC–115 in new and retrofitted heat transfer systems.*

c. Mineral Oil. *Mineral oil is acceptable as a substitute for CFC–11, CFC–12, CFC–113, CFC–114, and CFC–115 in new and retrofitted heat transfer systems.* Mineral oil has been used for decades as a heat transfer fluid. It is low in toxicity and poses no ozone depletion or global warming potentials. Note that local fire codes may contain requirements related to the use of mineral oil.

d. R–508. *R–508, which contains HFC–23 and R–116, is acceptable as a substitute for CFC–13, R–13B1, and R–503 in retrofitted and new industrial process refrigeration.* Both components of this blend exhibit extremely high GWPs and long lifetimes. HFC–23 has a GWP of 9,000 and a lifetime of 280 years, and R–116, perfluoroethane, has a GWP of 9,000 and a lifetime of 10,000 years. EPA believes this blend could significantly contribute to global warming if allowed to escape refrigeration systems. In addition, the long lifetimes of R–116 and HFC–23 mean any global warming or other effects would be essentially irreversible. While the current rule issued under section 608 of the CAA does not require recycling and recovery of this blend, or leak repair for systems using it, EPA strongly encourages users to anticipate future rulemakings with voluntary compliance. In particular, EPA urges users to reduce leakage and recover and recycle this blend during equipment

servicing and upon the retirement of equipment. This blend is nonflammable and does not deplete ozone.

e. Ammonia Absorption. *Ammonia absorption is acceptable as an alternative technology to household refrigerators and freezers using CFC–12 as a refrigerant.* This technology has been used for years in hotels, college dormitories, and other small spaces.

*B. Fire Suppression and Explosion Protection*

1. Acceptable

a. Total Flooding Agents. (1) Water Mist Using Potable Water or Natural Seawater. *Water Mist Systems using Potable Water or Natural Seawater are acceptable as a Halon 1301 substitute.* At EPA's request, manufacturers of water mist systems and other industry partners convened a medical panel to address questions posed by EPA concerning the potential physiological effects of inhaling very small water droplets in fire and non-fire scenarios. Disciplines represented on the Panel included inhalation toxicology, pulmonary medicine, physiology, aerosol physics, fire toxicity, smoke dynamics, and chemistry, with members coming from the commercial, university and military sectors.

The Executive Summary (draft ''Water Mist Fire Suppression Systems Health Hazard Evaluation;'' HARC, US Army, NFPA; March 1995) states: ''The overall conclusion of the Health Panel's review is that ... water mist systems using pure water do not present a toxicological or physiological hazard and are safe for use in occupied areas. The Panel does not believe that additional studies are necessary to reach this conclusion. The Health Panel recommends that additives be evaluated on a case-by-case basis depending on the toxic properties of the additive and the concentration at which it is used.''

EPA has determined that the Panel's findings are credible and significant, and thus is adopting its conclusions as the basis to this ruling. In order to clarify the practical meaning of the panel's recommendation, EPA is defining ''pure water'' as either water that is potable (drinkable) or as natural seawater, that is, water coming from the sea. Thus, EPA is listing water mist systems composed of potable water and natural sea water as acceptable without restriction. However, water mist systems containing additives different than those in potable water, and water mist systems comprised of mixtures in solution, must be submitted to EPA for SNAP review on a case-by-case basis. At this time, no such submissions have been received by the agency.

(2) [Water Mist/Surfactant Blend] A. *[Water Mist/Surfactant Blend] A is acceptable as a Halon 1301 substitute in normally unoccupied areas.* Water mist systems with additives are beginning to be developed for use in applications such as the engine compartments of a variety of vehicles and in machinery spaces. Following the positive peer review of water mist particles, and considering the particular use in unoccupied areas, EPA is listing this agent as acceptable in such normally unoccupied areas. Consideration for use in occupied areas is pending a medical peer review panel.

b. Streaming Agents. (1) Water Mist Systems Using Potable Water or Natural Seawater. *Water Mist systems using potable water or natural sea water are acceptable as a Halon 1211 substitute.* See the discussion under ''Total Flooding Agents,'' above.

*C. Medical Sterilants*

1. Acceptable

(a) Peroxyacetic Acid/Hydrogen Peroxide Gas Plasma Systems. *Peroxyacetic Acid/Gas Plasma Systems are acceptable as a 12/88 substitute for medical sterilization.* Peracetic acid/hydrogen peroxide solutions are in widespread use as sanitizers and disinfectants in food processing establishments and medical facilities. As they are currently manufactured, transported, and handled safely, incorporation of such solutions into medical sterilizing equipment should not pose increased risk of exposure either during value-added packaging or during use.

(b) Hydrogen Peroxide Gas Plasma Systems. *Hydrogen Peroxide Gas Plasma Systems are acceptable as a 12/88 substitute for medical sterilization.* Such systems are recognized by the Food and Drug Administration (FDA) as acceptable to proceed to market, and EPA has determined that they pose no unusual risk to human health or the environment.

## III. Substitutes Pending Review

The Agency describes submissions as pending if data are incomplete or for which the 90-day review period is underway and EPA has not yet reached a final decision. For submissions that are incomplete, the Agency will contact the submitter to determine a schedule for providing the missing information if the Agency needs to extend the 90-day review period. EPA will use its authority under section 114 of the Clean Air Act to gather this information, if necessary. Any delay of the review period does not affect a manufacturer's ability to sell a product 90 days after notification of the Agency. Substitutes currently pending completion of review are listed in Appendix A.

## IV. Additional Information

Contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday-Friday, between the hours of 10:00 a.m. and 4:00 p.m. (Eastern Standard Time) weekdays.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). **Federal Register** notices can be ordered from the Government Printing Office Order Desk (202) 783–3238; the citation is the date of publication. This Notice can also be retrieved electronically from EPA's Technology Transfer Network (TTN), Clean Air Act Amendment Bulletin Board. If you have a 1200 or 2400 bps modem, dial (919) 541–5742. If you have a 9600 bps modem, dial (919) 541–1447. For assistance in accessing this service, call (919) 541–5384. Finally, this notice may be obtained on the World Wide Web at http://www.epa.gov/docs/Ozone/index.html.

## List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: July 18, 1995.

**Mary D. Nichols,**

*Assistant Administrator.*

**Note:** The following Appendix will not appear in the Code of Federal Regulations.

## Appendix A: Summary of Acceptable and Pending Decisions

### Refrigeration and Air Conditioning—Acceptable Substitutes

| End-use | Substitute | Decision | Comments |
|---|---|---|---|
| CFC–11, CFC–12, CFC–113, CFC–114, CFC–115 Non-Mechanical Heat Transfer (Retrofit and New Equipment Designs/NIKs). | Volatile Methyl Siloxanes .. | Acceptable. | |
| | Water ..... | Acceptable. | |
| | Mineral Oil ..... | Acceptable. | |
| CFC–13, R–13B1, and R–503 Industrial Process Refrigeration and Very Low Temperature Refrigeration (Retrofit and New Equipment/NIKs). | R–508 ..... | Acceptable ..... | EPA strongly recommends the containment and reclamation of this substitute. |
| CFC–12 Household Refrigerators and Freezers, New Equipment/NIKs. | Ammonia absorption ..... | Acceptable. | |

### Refrigeration and Air Conditioning—Pending Decisions

| Application | Substitute | Comments |
|---|---|---|
| All CFC–12 End-Uses ..... | Blend Zeta ..... | EPA has requested additional data. |
| Heat Transfer ..... | HCFC–225. | |
| Motor Vehicle Air Conditioning ..... | R–406A, HCFC Blend Delta ..... | MVAC refrigerants will be used in accordance with use conditions, which require full notice-and-comment rulemaking. |

### Foam Blowing—Pending Substitutes

| End-use | Substitute | Comments |
|---|---|---|
| HCFCs, Polyurethane and Polyisocyanurate Laminated Boardstock Foam. | HFC–134a/HFC–143a Blend. | |
| HCFCs, Rigid Polyurethane Appliance Foam .. | HFC–134a/HFC–143a Blend. | |
| HCFCs, Rigid Polyurethane Commercial Refrigeration, Spray and Sandwich Panel Foam. | HFC–134a/HFC–143a Blend. | |
| HCFCs, Rigid Polyurethane Slabstock and Other Foam. | HFC–134a/HFC–143a Blend. | |
| HCFCs, Polyolefin Foams ..... | HFC–134a/HFC–143a Blend. | |
| HCFCs, Polyurethane Flexible Foams ..... | HFC–134a/HFC–143a Blend. | |
| HCFCs, Polyurethane Integral Skin ..... | HFC–134a/HFC–143a Blend. | |

### Fire Suppression and Explosion Protection—Acceptable Substitutes

| End-use | Substitute | Decision | Comments |
|---|---|---|---|
| Halon 1211, Streaming Agents ..... | Water Mist Systems using Potable or Natural Sea Water. | Acceptable. | |
| Halon 1301 ..... | Water Mist Systems using Potable or Natural Sea Water. | Acceptable. | |
| Total Flooding Agents ..... | [Water Mist Surfactant Blend] A ..... | Acceptable in Normally Unoccupied Areas. | |

### Fire Suppression and Explosion Protection Pending Substitutes

| End-use | Substitute | Comments |
|---|---|---|
| Halon 1211 ..... | $CF_3I$ ..... | Will be proposed acceptable in nonresidential applications in a forthcoming rulemaking. |
| Streaming Agents ..... | HFC–227ea ..... | Complete SNAP submission and personal monitoring data required. |
| | [Water Mist/Surfactant Blend] A .... | Pending review by EPA |
| | Water Mist with Additives ..... | Must be individually submitted to EPA and reviewed on a case-by-case basis. |
| Halon 1301 ..... | [HFC Blend] A ..... | Pending receipt of further data requested by the Agency. |
| Total Flooding Agents ..... | IG–55 (formerly [Inert Gas Blend] B). | Proposed Acceptable (forthcoming). |
| | IG–01 (formerly [Inert Gas Blend] C). | Proposed Acceptable (forthcoming). |

FIRE SUPPRESSION AND EXPLOSION PROTECTION PENDING SUBSTITUTES—Continued

| End-use | Substitute | Comments |
|---|---|---|
| | [Water Mist Surfactant Blend] A .... | Pending peer review for use in normally occupied areas. |
| | Water Mist Systems with Additives | Must be individually submitted to EPA and reviewed on a case-by-case basis. No submissions have been received to date. |

SOLVENT CLEANING—PENDING SUBSTITUTES

| End-use | Substitute | Comments |
|---|---|---|
| Metals cleaning w/ CFC–113, MCF, and HCFC–141b. | HCFC–122 | Agency is still reviewing ODP. This HCFC is a new chemical and must also complete Premanufacture Notice requirements under the Toxic Substances Control Act. |
| | HFC–4310mee | SNAP/Premanufacture Notice review under the Toxic Substances Control Act nearly completed. |
| Electronics cleaning w/ CFC–113, MCF and HCFC–141b. | Perfluoropolyethers | Agency evaluating global warming concerns. |
| Electronics cleaning w/ HCFC–141b. | Perfluorocarbons (C5F12, C6F12, C6F14, C7F16, C8F18, C5F11NO, C6F13NO, C7F15NO, and C8F16). | Agency in process of evaluating global warming concerns. |
| Precision cleaning w/ CFC–113, MCF. | HCFC–122 | Agency is still reviewing ODP. This HCFC is a new chemical and must also complete Premanufacture Notice requirements under the Toxic Substances Control Act. |
| | HFC–4310mee | SNAP and Premanufacture Notice review under the Toxic Substances Control Act is nearly completed. |
| | Chlorobromomethane | EPA is completing a more detailed analysis on the range of ODP for this substitute and is reviewing updated information on the toxicity of this substitute. |
| Precision cleaning w/ HCFC–141b | Perfluorocarbons (C5F12, C6F12, C6F14, C7F16, C8F18, C5F11NO, C6F13NO, C7F15NO, and C8F16). | Agency in process of evaluating global warming concerns. |

STERILANTS—ACCEPTABLE SUBSTITUTES

| End-use | Substitute | Decision | Comments |
|---|---|---|---|
| 12/88 CFC–12/Ethylene Oxide | Peroxyacetic Acid/Hydrogen Peroxide Gas Plasma Systems. | Acceptable. | |
| Sterilants | Hydrogen Peroxide Gas Plasma Systems. | Acceptable. | |

STERILANTS—PENDING SUBSTITUTES

| End-use | Substitute | Comments |
|---|---|---|
| 12/88 CFC–12/Ethylene Oxide | HFC–125/EtO | Awaiting FIFRA registration. |
| Sterilants | HFC–227ea/EtO | Awaiting FIFRA registration. |

AEROSOLS—PENDING SUBSTITUTES

| End-use | Substitute | Comments |
|---|---|---|
| CFC–11, HCFC–22, and HCFC–142b. | SF6 | Review nearly completed; extremely high GWP is major consideration. Compressed gas a viable alternative. |
| CFC–113, MCF, HCFC–141b as solvents. | HCFC–225 | EPA evaluating feasibility of controling occupational exposures during use. |
| | Volatile methyl siloxanes | EPA evaluating feasibility of controling occupational exposures during use. |
| | Perfluoropolyethers | EPA evaluating global warming concerns. |

[FR Doc. 95–18617 Filed 7–27–95; 8:45 am]
BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### 46 CFR Parts 201, 206, 246, 253, 275, 276, 285, and 290

**[Docket No. R–160]**

**RIN 2133–AB20**

### Removal of Obsolete Regulations

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Final Rule.

**SUMMARY:** In connection with the President's Regulatory Reinvention Initiative, the Maritime Administration (MARAD) has reviewed all of its existing regulations. This review identified regulations in 46 CFR Chapter II, or portions thereof, that are being removed because they are obsolete and noncontroversial.

**DATES:** This final rule is effective on July 28, 1995.

**FOR FURTHER INFORMATION CONTACT:** Edmund T. Sommer, Jr. Chief, Division of Regulations and Administrative Law, Telephone: 202–366–5181.

**SUPPLEMENTARY INFORMATION:** On March 4, 1995, President Clinton directed the heads of Federal departments and agencies, as part of the Administration's ongoing Regulatory Reinvention Initiative, ''to conduct a page-by-page review of all of your agency regulations now in force and eliminate or revise those that are outdated or otherwise in need of reform.'' As part of the Department of Transportation's effort, MARAD has conducted a page-by-page review of all of its regulations and has identified obsolete regulations for removal, by part, subpart, section or portion of a section, as follows:

#### 46 CFR Part 201—Rules of Practice and Procedure

Sections 201.4. Inspection of records, 201.5 Searching, copying, and certification of record fees therefore, and 201.186 Charges for documents, are being removed since they cite sections in 46 CFR Part 380 that have been removed and/or concern fees that are covered by the Department's Freedom of Information Act regulations at 49 CFR Part 7, Subpart I—Fees.

Sections 201.21 and 201.23. Persons not attorneys at law and Hearings, respectively, are being removed since they cover the practice in MARAD proceedings by practitioners, other than attorneys, who have actually never represented parties in these proceedings.

Section 201.25. Statement of interest relates to disclosures by practitioners before MARAD. The last sentence is obsolete and is being removed since it cites section 807 of the Merchant Marine Act, 1936, which has been repealed.

#### 46 CFR Part 206—Miscellaneous Fees

This Part is being removed. The fee charged for special statistical data in Subpart A is covered by the Department's Freedom of Information Act regulations at 46 CFR Part 7, Subpart I—Fees. Subpart B—Charges for Copies of Regulations—relates to obtaining copies of orders that MARAD no longer issues. MARAD no longer processes applications covered by Subpart C, which requires a fee of $400 to process applications by owners for the sale of subsidized vessels to a private party where appraisal is made for MARAD by an independent vessel appraiser.

#### 46 CFR Part 246—Formulae for Determining Sea Speed of Vessels

This Part is being removed since MARAD no longer uses the procedure set forth.

#### 46 CFR Part 253—Requirements for Maintaining Boom Lifting Capacities and Other Features, and Part 275—Outfitting Material and Equipment for Construction-Differential Subsidy Vessels

These Parts apply to the construction-differential subsidy (CDS) program. These Parts are being removed since CDS is no longer funded.

#### 46 CFR Part 276—Construction-Differential Subsidy Repayment

Section 276.3. Total repayment is being removed since the regulation was time constrained and that time has expired (June 5, 1986).

#### 46 CFR Part 285—Determination of Profit in Contracts and Subcontracts for Construction, Reconditioning and Reconstruction of Ships

This Part is being removed since MARAD no longer uses the procedure.

#### 46 CFR Part 290—Forms

This Part is being removed since the construction-differential subsidy and operating-differential subsidy programs to which the forms relate are not subject to new contract awards.

#### Rulemaking Analyses and Notices

*Executive Order 12866 (Regulatory Planning and Review)*

This rulemaking has been reviewed under Executive Order 12866 and Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). It is not considered to be an economically significant regulatory action under section 3(f) of E.O. 12866, since it has been determined that it is not likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. It is not considered to be a significant rule under the Department's Regulatory Policies and Procedures.

MARAD has determined that this rulemaking presents no substantive issue which it could reasonably expect would produce meaningful public comment since it is merely removing, pursuant to a Presidential directive, regulations or portions thereof that are obsolete, retention of which could serve no useful purpose. Accordingly, pursuant to 5 U.S.C. 553(c) and (d), Administrative Procedure Act, MARAD finds that good cause exists to publish this as a final rule, without opportunity for public comment, and to make it effective on the date of publication.

This rule has not been reviewed by the Office of Management and Budget under Executive Order 12866.

*Federalism*

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*Regulatory Flexibility Act*

The Maritime Administration certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

*Environmental Assessment*

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

*Paperwork Reduction Act*

This rulemaking contains no reporting requirement that is subject to OMB

approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 46 CFR Parts 201, 206, 246, 253, 275, 276, 285 and 290**

Part 201—Administrative practice and procedure.

Part 206—Administrative practice and procedure.

Part 246—Maritime carriers, Measurement standards, National defense.

Part 253—Maritime carriers, National defense.

Part 276—Grant programs—transportation, Maritime carriers.

Part 285—Administrative practice and procedure, Maritime carriers, Reporting requirements, Uniform system of accounts.

Part 290—Government contracts, Maritime carriers.

Accordingly, for the reasons set forth in the preamble, MARAD is taking the following action:

1. The authority for 46 CFR Part 201 is revised to read as follows:

**Authority:** 46 App. U.S.C. 1114(b); 49 CFR 1.66.

2. The authority for 46 CFR Part 276 is revised to read as follows:

**Authority:** 46 App. U.S.C. 1114(b), 1117, 1156, and 1204; 49 CFR 1.66.

**TITLE 46**

**PARTS 201, 276—[AMENDED]**

**PARTS 206, 246 253, 275, 285, 290—[REMOVED]**

3. In Title 46 of the Code of Federal Regulations, in part 201, remove and reserve sections 201.4, 201.5, 201.23 and 201.86, and remove the last sentence of section 201.25.

4. In part 276, remove section 276.3.

5. Under the authority of 46 app. U.S.C. 1114(b) parts 206, 246, 253, 275, 285 and 290 are removed.

By Order of the Maritime Administrator.

Dated: July 24, 1995.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 95–18555 Filed 7–27–95; 8:45 am]

BILLING CODE 4910–81–P

**46 CFR Parts 345, 346, and 347**

**[Docket No. R–155]**

**RIN No. 2133–AB15**

## Federal Port Controllers; Clarification of the Event That Allows the Activation of the Federal Port Controller Service Agreements

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Maritime Administration's (MARAD) Federal Port Controllers regulations at 46 CFR Part 346, and provides a harmonizing amendment to the definition of ''Federal Port Controller'' in Part 345. These regulations now provide that, when needed during the existence of a state of war or national emergency proclaimed by the President of the United States, certain port facilities in the United States shall be controlled and used exclusively by the Federal Government, operating through the National Shipping Authority (NSA) of MARAD, pursuant to provisions of service agreements between the Director, NSA, and Federal Port Controllers appointed by MARAD. The regulations in Part 340 establish procedures for assigning priority for use by defense agencies, when appropriate, on commercial terms, of commercial shipping services, containers and chassis, port facilities and services, and for allocating commercial vessels services, containers and chassis, and port facilities and services for exclusive use by defense agencies. The amendments to Parts 345 and 346 will allow, at MARAD's discretion, the activation of standby service agreements between the United States of America and port authorities or private corporations in connection with the deployment of the Armed Forces of the United States or other requirements of the nation's defense. This is the same activation trigger as in Part 340—Priority Use and Allocation of Shipping Services, Containers and Chassis, and Port Facilities and Services for National Security and National Defense Related Operations.

**DATES:** This final rule is effective on August 28, 1995.

**FOR FURTHER INFORMATION CONTACT:** John Pisani, Director, Office of Ports and Domestic Shipping, Maritime Administration, Washington, DC. 20590. Telephone: (202) 366–4357.

**SUPPLEMENTARY INFORMATION:** These amendments to MARAD's regulations at 46 CFR subchapter I–B are necessary because the event that allows activation of the Federal Port Controller service agreements is not consistent with the event that activates the priority use and allocation regulations in part 340.

Under non-emergency conditions, the public ports of the United States are administered, under a wide variety of authorities, by their respective state governments. The wide variance in their responsibilities, jurisdictions, operations and managements reflects the differences of the various governing bodies. The various contingency Federal procedures administered by MARAD are intended to assert reasonable, uniform, limited Federal administration of the otherwise diverse U.S. network of public ports in an emergency which affects the national interest. The procedures are set forth under three interdependent documents:

1. Special inter-agency coordination required under emergency circumstances is established through the Memorandum of Understanding on Port Readiness. These procedures are in effect at all times.

2. Use of real port property and related services are assured through the regulations at 46 CFR part 340, addressing the priority use and allocation of port facilities, as well as shipping services and containers and chassis. These procedures can become operative in the event of the deployment of the Armed Forces of the United States or other requirements of the nation's defense.

3. Limited Federal administration of the U.S. network of public ports is achieved by the standby Federal Port Controller procedures set forth in a ''Service Agreement, Federal Port Controller'', in 46 CFR part 346. At present, these procedures can only be activated upon the declaration of war or national emergency.

**Proposed Rule and Comments**

MARAD published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on November 18, 1994 (59 FR 59742), noting that the present disparity with respect to the event that triggers the activation of contingency Federal procedures under 46 CFR parts 340 and 346, respectively, can create confusion. The present procedures set forth in 46 CFR part 340 can become operative without a Presidential declaration of emergency to eliminate potential adverse delay, while the activation of Federal Port Controller service agreements in 46 CFR part 346 requires a ''declaration of war or national emergency.'' The NPRM noted that events during Operations DESERT SHIELD/DESERT STORM showed that the Government would not have had the authority to obtain needed priority utilization of port facilities, shipping services and containers in a timely manner with the present Part 346

requirement for a declaration of war or national emergency.

At the local port level, the official named to become the Federal Port Controller in an emergency is a key MARAD official who represents the agency in the execution of a Memorandum of Understanding on Port Readiness. If it becomes necessary to exercise the service priority or allocation authorities of 46 CFR part 340, the Federal Port Controller could act as the local Federal agent. Since, under existing regulations, it is impossible to activate service agreements with Federal Port Controllers unless an emergency has been declared, it would also be impossible to use the services of the Federal Port Controllers to assist in the allocation of priority of service requirements which may be needed during a deployment. The amendments to Part 346 will allow, but not necessitate, activation of selected contracts if a deployment is in progress, without the required declaration of an emergency.

MARAD received comments from four port authorities located in the North Atlantic and South Atlantic regions. Two of the port authorities were in full support of the rulemaking as proposed. One port authority expressed concern, that using the deployment of the Armed Forces of the United States as the triggering event for activation of the standby service agreements could impose a potential burden on the designated Federal Port Controllers, since the frequency of possible deployment appears to far exceed that of declarations of national emergencies.

While MARAD acknowledges that a purpose for harmonizing the triggering mechanism for authorizing activation of these service agreements with part 340 activations is to allow activations under broadened circumstances, such activations would occur only in response to the national needs of the United States.

Another commenter was of the view that the existing terms of the service agreement were adequate and that the change proposed by MARAD will cause confusion and misunderstanding between port terminals and participants in military operations. MARAD cannot agree with this prediction and believes that just the opposite will occur. The proposed amendments to part 346 will harmonize the timing of the activation of service agreements with MARAD's regulations at 46 CFR part 340 governing the priority use and activation of shipping services, containers and chassis, and port facilities and services. It should actually diminish confusion and misunderstandings and will provide more flexibility in responding to the need for U.S. deployment of troops when there is no formal declaration of war or national emergency.

Accordingly, MARAD is adopting, as a final rule without change, the amendments to 46 CFR parts 345 and 346 set forth in the NPRM, together with amendments to section 2(a) of part 346 to correct an obsolete reference to former Title 32A of the CFR. There are also amendments to the authority citations in 46 CFR parts 345, 346 and 347 to give recognition to the repeal of the Federal Civil Defense Act of 1950 and its reenactment in different form.

**Rulemaking Analyses and Notices**

*Executive Order 12866 (Regulatory Planning and Review)*

This rulemaking has been reviewed under Executive Order 12866 (Regulatory Planning and Review). It is not considered to be an economically significant regulatory action under Section 3(f) of E.O. 12866, since it has been determined that it is not likely to result in a rule that may 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. This rule would not significantly affect other Federal agencies; would not materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in E.O. 12866; and has been determined to be a nonsignificant rule under the Department's Regulatory Policies and Procedures. Accordingly, it is not considered to be a significant regulatory action under E.O. 12866.

This rule did not require review by the Office of Management and Budget (OMB) under Executive Order 12866.

*Federalism*

MARAD has analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*Regulatory Flexibility Act*

MARAD certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

*Environmental Assessment*

MARAD has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

*Paperwork Reduction Act*

This rulemaking contains no new reporting requirement that is subject to OMB approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1080 (44 U.S.C. 3501, et seq.).

**List of Subjects in 46 CFR Parts 345, 346 and 347**

Freight, Harbors, Maritime carriers, and National defense.

Accordingly, MARAD proposes to amend 46 CFR parts 345, 346 and 347 as follows:

## PART 345—[AMENDED]

1. The authority citation for part 345 is revised to read as follows:

**Authority:** The Defense Production Act of 1950, as amended (50 App. U.S.C. 2061, *et seq.*); E.O. 12656, sec. 1401(7) (53 FR 47491, 3 CFR 1988 Comp.); E.O. 12919, section 201(a), June 3, 1994, 59 FR 29525; 49 CFR 1.45(5).

### § 1 [Amended]

2. Sec. 1(c) is amended by removing the words ''in time of national emergency,'' and adding in their place the words ''upon deployment of the Armed Forces of the United States, or other requirements of the nation's defense.''

## PART 346—[AMENDED]

1. The authority citation for part 346 is revised to read as follows:

**Authority:** The Defense Production Act of 1950, as amended (50 App. U.S.C. 2061, et seq.); E.O.12656, sec. 1401(7) (53 FR 47491, 3 CFR 1988 Comp.); E.O. 12919, section 201(a), June 3, 1994, 59 FR 29525; 49 CFR 1.45(5).

### § 2 [Amended]

2. Sec. 2, *Definitions,* is amended as follows:

(a) In paragraph (a) by removing the words ''port facilities'' when they first appear and reference to section ''1(e) of 32A CFR part 1901,'' and adding in its place the words ''port facilities and services'' and the reference to section ''340.2(o) of 46 CFR Part 340''; and

(b) in paragraph (b) *Federal Port Controller,* by removing the words ''in time of war and national emergency''

and adding in their place the words ''in connection with the deployment of the Armed Forces of the United States, or other requirements of the nation's defense.''

3. Sec. 3 is revised to read as follows:

**§ 3 Standby agreements.**

The Director, NSA, may negotiate the standard form of service agreement, specified in section 4, with port authorities on a standby basis, prior to the deployment of the Armed Forces of the United States, or other requirements of the nation's defense. In such cases, the contractor accepts the obligation to maintain a qualified incumbent in the position specified in Article 1 of the service agreement and to be prepared to furnish the resources specified in Articles 4 and 5. An agreement executed on a standby basis may become operational in connection with the deployment of the Armed Forces of the United States, or other requirements of the nation's defense. An agreement executed after the deployment of the Armed Forces of the United States, or other requirements of the nation's defense may be operational upon execution.

**§ 4 [Amended]**

4. Sec. 4, Service Agreements, is amended as follows: a. In Article 4(a), by removing the words ''war effort or declared national emergency,'' and adding in their place the words ''deployment of the Armed Forces of the United States, or other requirements of the nation's defense.''

b. In Article 12, in paragraphs (b)(1) and (b)(2), by removing, in each paragraph, the words ''period of war or national emergency,'' and adding in their place the words ''deployment of the Armed Forces of the United States, or other requirements of the nation's defense.''

## PART 347—[AMENDED]

The authority citation for Part 347 is revised to read as follows:

**Authority:** The Defense Production Act of 1950, as amended (50 App. U.S.C. 2061, *et seq.*); E.O. 12656, sec. 1401(7) (53 FR 47491, 3 CFR 1988 Comp.); E.O. 12919, section 201(a), June 3, 1994, 59 FR 29525; 49 CFR 1.45(5).

By Order of the Maritime administrator.
Dated: July 24, 1995.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 95–18554 Filed 7–27–95; 8:45 am]

BILLING CODE 4910–81–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

**[CC Docket No. 92–237; FCC 95–283]**

### Administration of the North American Numbering Plan

**AGENCY:** Federal Communications Commission.

**ACTION:** Policy statement.

**SUMMARY:** On July 13, 1995, the Commission adopted a Report and Order (Order) regarding administration of the North American Numbering Plan. This document gives notice of the Order which adopted a model for administration of telephone number resources by establishing the North American Numbering Council and requiring a neutral North American Numbering Plan Administrator. This action fosters competition and new services in the telecommunications marketplace by ensuring pro-competitive and impartial administration of crucial numbering resources.

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

**FOR FURTHER INFORMATION CONTACT:** Mike Specht (Senior Engineer) 202–634–1816, Scott A. Shefferman (Attorney) 202–634–1952 or Elizabeth Nightingale (Attorney) 202–634–1832, Domestic Facilities Division, Common Carrier Bureau.

**SUPPLEMENTARY INFORMATION:** This summarizes the Commission's Report and Order in the matter of Administration of the North American Numbering Plan, (CC Docket 92–237, adopted July 13, 1995, and released July 13, 1995). The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., NW., Washington, DC, or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 2100 M St., NW., Suite 140, Washington, DC 20037, phone 202–857–3800.

### Analysis of Proceeding

On September 26, 1991, the National Association of Regulatory Utility Commissioners petitioned the Commission to begin a broad inquiry into administration of the North American Numbering Plan (NANP). The NANP is the basic numbering scheme that permits interoperable telecommunications service within the United States, Canada, Bermuda and most of the Caribbean. Administration of the NANP is currently performed by Bell Communications Research, Inc. (Bellcore), a research company owned by the seven regional Bell Operating Companies. On October 29, 1992, the Commission released a Notice of Inquiry (NOI), summarized at 57 FR 53462 (Nov. 10, 1992), to explore several long range issues related to administration of the NANP. The NOI consisted of two phases: Phase One focused on who should administer the NANP and how the administration might be improved; and Phase Two focused on Carrier Identification Codes (CIC).

On August 19, 1993, Bellcore advised the Commission that it wished to relinquish its role as NANP Administrator. On March 30, 1994, the Commission adopted a Notice of Proposed Rulemaking (NPRM), summarized at 59 FR 24103 (May 10, 1994), tentatively concluding that: (1) The Commission should select a single NANP Administrator that is a non-government entity not closely affiliated with any particular segment of the telecommunications industry; (2) the Commission should oversee the NANP Administrator; (3) the NANP Administrator should take over Bellcore's current functions, as well as administer central office (CO) codes (the second three digits in a standard ten-digit telephone number); (4) the transition to a new NANP structure should begin as soon as the new Administrator is identified, and should extend to a date at least six months after the beginning of the use of interchangeable Numbering Plan Area codes (''NPAs'' or ''area codes'') in January 1995; and (5) the Commission should impose fees to recover costs of regulating numbering resources. Additionally, the NPRM sought comment on whether the Commission should establish a policy board to assist regulators in developing and coordinating numbering policy under the NANP. The NPRM also sought comment on whether the Federal Advisory Committee Act would apply to such a board.

The Order adopted July 13, 1995, is guided by several principles: (1) To maintain and foster an integrated approach to number administration throughout North America; (2) to provide a structure for number administration that is impartial and pro-competitive; (3) to correct the current deficiencies of the number administration structure, while maintaining the positive aspects of the current structure; and (4) to enhance Commission control and awareness of numbering issues during the transition to a competitive telecommunications industry.

The Order states that the Commission will set broad numbering policy objectives and be the final arbiter of all disputes involving United States numbering issues. The Order also establishes a North American Numbering Council (NANC), which will have broad membership and be organized under the provisions of the Federal Advisory Committee Act, 5 U.S.C., App. (1988), and will advise the Commission, guide the NANP Administrator, apply Commission policy to resolve issues arising in the administration of the NANP, and conduct initial dispute resolution of all issues. The NANP Administrator will process number resource applications and maintain administrative numbering databases. Details and additional activities of the NANP Administrator are to be determined by the NANC. The Commission will oversee the NANC, with participation from other NANP member countries. The NANC will select the NANP Administrator.

The Order concludes that the NANP Administrator should be a single, non-government entity that is not closely identified with any particular industry segment. The new NANP Administrator should take over the NANP administration functions currently performed by Bellcore. The functions associated with CO code administration, currently performed by the dominant local exchange carrier in each area code, will be centralized and performed by the new NANP Administrator. The Order states that the Commission can and should impose fees to recover its costs of regulating numbering resources and determines that the costs of the new NANP Administrator should be recovered by charging each communications provider a fee based on its gross revenue. Finally, the Order establishes a transition schedule to achieve the new structure for overall number administration.

The Order does not address various other issues raised in the NOI and the NPRM . These issues were considered unrelated to the structure for overall number administration.

### Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, et seq., the Commission's final analysis in this Order is as follows:

### I. Need and Purpose of This Action

This Report and Order addresses comments filed in response to the Notice of Proposed Rulemaking (NPRM) concerning administration of the North American Numbering Plan. The decisions and policies are necessary to ensure an efficient administration of numbering resources.

After evaluating the comments and reply comments in this proceeding, and further examination of the impact of any rule changes on small entities, the Commission finds that the decisions and policies established in this proceeding will not have a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. While the decisions and policies adopted in this proceeding apply to telecommunications corporations of all sizes that are now assigned telephone numbers or that may in the future seek such assignments, the impact on small business entities served by these corporations and on small telecommunications companies will not be significant.

### II. Summary of Issue Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

No comments were submitted in direct response to the Initial Regulatory Flexibility Analysis.

### III. Significant Alternatives Considered

The NPRM requested comments on several issues. The Commission has considered all comments and has determined that its numbering policies are best served by the policies adopted herein.

### Ordering Clauses

1. Accordingly, *It is Ordered,* that pursuant to authority contained in Sections 1, 4(i), 4(j), 7, 201–205 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157, 201–205, and 403, that the decisions and policies adopted herein shall be effective on August 28, 1995.

### List of Subjects in 47 CFR Part 1

Communications common carriers, Telecommunications.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 95–18453 Filed 7–27–95; 8:45 am]

**BILLING CODE 6712–01–M**

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## 47 CFR Part 73

**[MM Docket No. 92–291; RM–8133]**

## Radio Broadcasting Services; Cambridge and St. Michaels, MD

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for reconsideration.

**SUMMARY:** The Commission denies the petition filed by CWA Broadcasting, Inc. for reconsideration of the *Report and Order* in MM Docket 92–291, 59 FR 32177, June 22, 1994. In that proceeding, CWA Broadcasting, Inc., the permittee of Station WFBR, Cambridge, Maryland, requested the reallotment of Channel 232A to St. Michaels, Maryland, and modification of the construction permit for Station WFBR to specify St. Michaels as the new community of license. The proposal was denied because it violated a policy that the Commission will not accept petitions to change the community of license before or during the first year of station operation when a permittee or licensee received in a comparative hearing a decisionally significant preference. CWA has not shown that this policy was improperly applied to its rulemaking proposal.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

Federal Communications Commission.

**Douglas W. Webbink,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95–18559 Filed 7–27–95; 8:45 am]

**BILLING CODE 6712–01–F**

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## 47 CFR Part 73

**[MM Docket No. 92–247; RM–8098]**

## Radio Broadcasting Services; Christiansted, VI

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Clayton Knight, allots Channel 285A at Christiansted, Virgin Islands, as its fifth local commercial FM transmission service. *See* 57 FR 55216, November 24, 1992. Channel 285A can be allotted to Christiansted in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.0 kilometers (5.0 miles) west. The coordinates for Channel 285A at Christiansted are North Latitude 17–45–00 and West Longitude 64–46–50. With this action, this proceeding is terminated.

**DATES:** Effective September 8, 1995. The window period for filing applications will open on September 8, 1995, and close on October 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order,* MM Docket No. 92–247, adopted July 14, 1995, and released July 25, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, 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.

**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:** Sections 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 Virgin Islands, is amended by adding Channel 285A at Christiansted.

Federal Communications Commission.

**Andrew J. Rhodes,**

*Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95–18560 Filed 7–27–95; 8:45 am]

BILLING CODE 6712–01–F

## 47 CFR Part 73

**[MM Docket No. 93–320; RM–8407]**

## Radio Broadcasting Services; Ellison Bay, WI

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for reconsideration.

**SUMMARY:** The Commission denies the petition filed by The Eden Broadcast Group (''petitioner'') for reconsideration of the *Report and Order* in MM Docket No. 93–320, 59 FR 28014, May 31, 1994. The *Report and Order* denied the allotment of Channel 223A to Ellison Bay, Wisconsin, as Ellison Bay does not qualify as a community for allotment purposes. As petitioner has provided no new information which would show community status, there is no basis to set aside our earlier action denying the allotment of an FM channel at Ellison Bay.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

Federal Communications Commission.

**Douglas W. Webbink,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95–18562 Filed 7–27–95; 8:45 am]

BILLING CODE 6712–01–F

## 47 CFR Part 73

**[MM Docket No. 94–122; RM–8513]**

## Radio Broadcasting Services; Atlantic and Glenwood, IA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Valley Broadcasting, Inc., reallots Channel 279C from Atlantic to Glenwood, Iowa, as its first local aural service, and modifies the license of Station KXKT to specify Glenwood as its community of license. *See* 59 FR 54545, November 1, 1994. Channel 279C can be allotted to Glenwood in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.6 kilometers (15.3 miles) north to accommodate petitioner's desired transmitter site. The coordinates for Channel 279C at Glenwood are 41–15–49 North Latitude and 95-46-21 West Longitude. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** September 8, 1995.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order,* MM Docket No. 94–122, adopted July 14, 1995, and released July 25, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, 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 Iowa, is amended by removing Atlantic, Channel 279C and adding Glenwood, Channel 279C.

Federal Communications Commission.

**Andrew J. Rhodes,**

*Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95–18564 Filed 7–27–95; 8:45 am]

BILLING CODE 6712–01–F

# DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## 49 CFR Chapter III and Parts 325, 350, 382, 385, 387, 390, 391, 392, 395, 396, and 397

**RIN 2125–AD55**

## Zero Base Review of the Federal Motor Carrier Safety Regulations; Correcting Amendments

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule; correcting amendments.

**SUMMARY:** The FHWA is making technical corrections to keep the Federal Motor Carrier Safety Regulations accurate and up to date. This rulemaking action is one part of the FHWA's Zero Base Regulatory Review.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter C. Chandler, Office of Motor Carrier Research and Standards, (202) 366–5763, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. 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 first Federal Motor Carrier Safety Regulations (FMCSRs) were promulgated in 1937, and have been amended many times since then. In September 1992, the FHWA began a

comprehensive multi-year project to develop modern, uniform safety regulations that are up to date, clear, concise, easier to understand, and more performance-oriented. This project has been named the ''Zero Base Regulatory Review.''

Upon the announcement of the first four public outreach sessions in the **Federal Register** (57 FR 37392) on August 18, 1992, the FHWA opened public docket No. MC–92–33 to allow interested parties who were unable to attend an outreach session the opportunity to make comments and recommendations for the improvement of the FMCSRs. The FHWA has completed an extensive review of the FMCSRs and has identified technical changes that are needed to correct errors and obsolete references. The corrections are discussed below.

*Terminology Changes*

In chapter III, the words ''he,'' ''his,'' ''him,'' and ''himself'' are used where there is no intention to exclude the feminine gender. The words ''he/she,'' ''his/her,'' ''him/her,'' and ''himself/herself,'' respectively, would be more appropriate. In chapter III, the words ''he,'' ''his,'' ''him,'' and ''himself'' are being replaced with the words ''he/she,'' ''his/her,'' ''him/her,'' and ''himself/herself,'' respectively, in all instances except in the phrases ''he or she,'' ''his or her,'' and ''him or her.'' The rule in § 390.7(a)(3) that words in part 325 of subchapter A and in subchapter B imparting the masculine gender include the feminine gender is being removed.

In parts 390, 391, 392, and 395, the term ''vehicle'' is used where ''motor vehicle'' or ''commercial motor vehicle'' would be more precise. The term ''vehicle'' in all instances has been removed or replaced either with ''motor vehicle'' or ''commercial motor vehicle,'' whichever is appropriate. In addition, the term ''motor vehicle'' is often used in these parts where ''commercial motor vehicle'' would be more precise. The term ''motor vehicle'' has been replaced with ''commercial motor vehicle'' wherever appropriate.

There are numerous places in chapter III of title 49, CFR, where the Office of Motor Carriers is mentioned by its former name, the Bureau of Motor Carrier Safety. The FHWA is making a nomenclature change to correct these obsolete names.

*Tires (Section 325.93)*

The introductory paragraph of § 325.93(b) refers to the Director of the Bureau of Motor Carrier Safety, a position that no longer exists, when it should refer to the Associate Administrator for Motor Carriers. Section 325.93(b) is being amended to correct this reference.

*Definitions (Section 350.3)*

The definition of *motor carrier* in § 350.3 does not include a private motor carrier of passengers. The FHWA published a final rule, ''Private Motor Carriers of Passengers,'' on February 23, 1994, which made private motor carriers of passengers involved in interstate transportation subject to the FMCSRs (with certain exceptions) [59 FR 8748]. This rule became effective on January 1, 1995. Since private motor carriers of passengers are now subject to the FMCSRs and part 350 prescribes requirements for Federal assistance to the States for programs to adopt and enforce the FMCSRs, the definition of *motor carrier* in § 350.3 is being amended to cross-reference the definition of *motor carrier* in § 390.5 which was revised by the February 23, 1994, final rule.

*Tolerance Guidelines for Adopting Compatible State Rules and Regulations (Part 350, app. C)*

In part 350, appendix C, paragraph 3(e), there is an error in the reference to the 100 air-mile radius exemption. This exemption was moved from § 395.8(l) to § 395.1(e) on July 30, 1992 [57 FR 33638, at 33647]. A technical correction is being made to include the proper regulatory citation for the exemption.

**Controlled Substances and Alcohol Use and Testing; Authority**

*Citation (Part 382)*

The authority citation for Part 382 is being amended to include ''49 U.S.C. 31133'' which pertains to the general powers of the Secretary of Transportation.

*Safety Fitness Procedures; Failure to Report (Section 385.23)*

Section 385.23 incorrectly refers to itself as the source of the requirement that a motor carrier operating in interstate or foreign commerce file a Motor Carrier Identification Report. This requirement is found in § 385.21. Section 385.23 is being amended to correct this error.

*Financial Responsibility Required (Section 387.31)*

Section 387.31(b)(3) provides an exception allowing Mexican motor carriers to meet the minimum financial responsibility requirements by obtaining the required amount of insurance coverage for periods of 24 hours or longer from insurers that meet the requirements of § 387.35. Section 387.31(b)(3)(i) requires Mexican motor carriers so insured to have a copy of the certificate of registration, issued by the Interstate Commerce Commission, in each of its buses. Since the certificate requirement applies only to foreign motor carriers and foreign motor private carriers ''of property'' [49 U.S.C. 10530(b)(1), (2)], Mexican passenger carriers are not required to apply for a certificate of registration for entry into the United States. Therefore, § 387.31(b)(3)(i) is being removed.

*Federal Motor Carrier Safety Regulations; General Definitions (Section 390.5)*

There is an error in the definition of *employee*. Paragraph (d) of the definition reads ''Any individual, other than an employee * * *.'' The statutory definition [formerly 49 U.S.C. App. 2503(2)(D), now recodified in slightly different language at 49 U.S.C. 31132(2)] reads ''Any individual, other than an employer * * *.'' The regulatory language is being corrected.

The citation in the definition of *Exempt intracity zone* is out of date. The section referred to in this definition (§ 390.3(g)) was removed on March 24, 1989 [54 FR 12200] and replaced with language required by statute [49 U.S.C. 31136(f), formerly 49 U.S.C. App. 2505(h)]. That language is codified at § 391.2(d) and the definition of *Exempt intracity* zone is being corrected to refer to that section.

The definition of *Principal place of business* refers to the records required by parts 387, 390, 391, 395, and 396. The records required by part 396 must be maintained where the motor vehicle is either housed or maintained (§ 396.3(c)), not at the principal place of business. Therefore, this reference to part 396 is being removed.

The FHWA published a final rule, ''Controlled Substances and Alcohol Use and Testing,'' on February 15, 1994, which added part 382 to the FMCSRs [59 FR 7484, at 7505]. Section 382.401(d) requires all records required by part 382 to be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized official of the FHWA. A reference to these recordkeeping requirements is being added to the definition of *Principal place of business.*

*Locations of Regional Motor Carrier Safety Offices (Section 390.27)*

The title of § 390.27 requires a technical correction. The Office of Motor Carrier Safety has been renamed the Office of Motor Carriers. The title of § 390.27 is being changed to read

''Locations of regional offices of motor carriers'' to reflect this name change.

*General Exemptions (Section 391.2); Disqualification of Drivers (Section 391.15)*

Section 391.2(c) contains a general exemption from the rules in part 391 for certain farm vehicle drivers. This general exemption does not apply to a farm vehicle driver of an articulated (combination) motor vehicle that has a gross weight, including load, of more than 10,000 pounds. This exception to the general exemption requires a technical correction. The jurisdiction of the FHWA depends on the gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR), not the gross weight, of a motor vehicle. Section 391.2(c) is being amended to state that the rules in part 391 do not apply to a farm vehicle driver except a farm vehicle driver who drives an articulated (combination) ''commercial motor vehicle.'' A GVWR or GCWR of 10,001 or more pounds is included in the definition of a *commercial motor vehicle* in § 390.5.

The citation for the Hazardous Materials Transportation Act in §§ 391.2(d)(4) and 391.15(d)(2)(iv) is obsolete because 49 U.S.C. app. 1801–1813 were recodified at 49 U.S.C. 5101 *et seq.* These references are being amended.

*Qualifications of Drivers (Section 391.11)*

Section 391.11(b)(7) requires a commercial motor vehicle driver to have a currently valid commercial motor vehicle operator's license issued only from one State or jurisdiction. It contains an exception not effective after December 31, 1989. Since this date has passed, the exception is obsolete and is being removed.

*Disqualification of Drivers (Section 391.15); Physical Qualifications for Drivers (Section 391.41); Drugs and Other Substances (Section 392.4)*

The footnotes to §§ 391.15(c)(2)(ii) and (iii), 391.41(b)(12), and 392.4(a)(1) mention that a list of Schedule I drugs and other substances can be obtained by writing the ''Director, Office of Motor Carrier Standards'' or a ''Regional Office of Motor Carrier and Highway Safety of the Federal Highway Administration.'' The current names for these offices are the ''Office of Motor Carrier Research and Standards'' and ''Regional Office of Motor Carriers of the Federal Highway Administration,'' respectively, and the footnotes are being changed accordingly.

*Examinations and Tests; Subpart D Heading (Part 391)*

The heading of subpart D of part 391 requires a technical correction. The FHWA published a final rule, ''Removal of Obsolete and Redundant Regulations and Appendices,'' on November 23, 1994, which removed the requirements related to the written examination, §§ 391.35 and 391.37. Subpart D of part 391 now contains only the requirements related to the road test, §§ 391.31 and 391.33. Therefore, the heading of subpart D of part 391 is being changed to read ''Tests.''

*Medical Examination; Certificate of Physical Examination (Section 391.43)*

Section 391.43(g) contains the mandatory form for a medical examiner's certificate. Previous forms are allowed to be used until depleted, but no later than November 8, 1994, provided the medical examiner writes down all required information. Since this date has passed, this provision in § 391.43(g) is obsolete and is being removed.

*Resolution of Conflicts of Medical Evaluation (Section 391.47)*

The term ''Director'' referred to in § 391.47(c) through (f) is the Director of the Bureau of Motor Carrier Safety, a position that no longer exists. Determinations of a driver's medical qualification in cases of conflicting medical evaluations are now made by the Director, Office of Motor Carrier Research and Standards. All references to ''Director'' in § 391.47 have been replaced with ''Director, Office of Motor Carrier Research and Standards.''

*Drivers of Articulated (Combination) Farm Vehicles (Section 391.67)*

Section 391.67(d) exempts a farm vehicle driver who is at least 18 years old and operates an articulated commercial motor vehicle from the requirements to be medically examined and to have a medical examiner's certificate on his/her person until January 1, 1973. Since this date has passed, § 391.67(d) is obsolete and is being removed.

*Private Motor Carriers of Passengers (Nonbusiness) (Section 391.68)*

Section 391.68(b) exempts a private motor carrier of passengers (business) driver from the rules in part 391 relating to road tests (subpart D). This exemption is in a section which should only contain exemptions for private motor carriers of passengers (nonbusiness). It is also redundant because § 391.73 exempts private motor carriers of passengers (business) from the road test requirements. Therefore, § 391.68 is being amended by removing the paragraph (a) designation, redesignating paragraphs (a)(1) through (a)(6) to read as (a) through (f), respectively, and removing paragraph (b).

*Definitions (Section 395.2)*

The FHWA published a final rule, ''Removal of Obsolete and Redundant Regulations and Appendices,'' on November 23, 1994, which removed paragraph (6) and redesignated paragraphs (7) through (9) of the definition of *On duty time* in § 395.2 as paragraphs (6) through (8), respectively [59 FR 60319, at 60323]. Paragraph (10) of the definition of *On duty time* was not appropriately redesignated as paragraph (9). The definition of *On duty time* is being amended accordingly.

*Maximum Driving and On-duty Time (Section 395.3)*

The title of § 395.3 requires a technical correction. Section 395.3(b) formerly stated that no driver shall be on duty in excess of 60 hours in any period of 7 consecutive days or 70 hours in any period of 8 consecutive days (except driver salespersons). The FHWA published a final rule on October 30, 1987, which amended § 395.3(b) to allow a driver to perform nondriving duties after reaching 60 hours of on duty time in 7 consecutive days or 70 hours of on duty time in 8 consecutive days, but prohibited a driver to drive a commercial motor vehicle after reaching this limit [52 FR 41718, at 41721]. The FMCSRs no longer limit how long a driver may remain on duty. The title of § 395.3 is being changed to read ''Maximum Driving Time'' to reflect this amendment.

The FMCSRs have always prohibited a motor carrier from permitting or requiring a driver to violate the hours of service regulations. In addition, the FMCSRs previously prohibited a driver from violating the hours of service regulations. The latter prohibition was inadvertently omitted when § 395.3 was amended on July 30, 1992 [57 FR 33638, at 33649]. The FHWA is therefore amending § 395.3(b) to make it clear that a driver is personally prohibited from driving a commercial motor vehicle after having been on duty 60 hours in any 7 consecutive days or 70 hours in any 8 consecutive days.

*Driver's Record of Duty Status (Section 395.8)*

The references in § 395.8(h) (2), (3), and (4) to § 395.2 (f), (b), and (a), respectively, are obsolete. Section 395.8(h) (2), (3), and (4) should refer to

§ 395.2 because lettered paragraphs for specific definitions were removed on July 30, 1992 [57 FR 33638, at 33648–33649]. These references are being amended accordingly.

The term ''vehicle condition reports'' is used in the graph grid illustration after § 395.8(k)(2). However, the term ''driver vehicle inspection report'' is the appropriate term. The former is being replaced with the latter.

*Automatic On-Board Recording Devices (Section 395.15)*

Section 395.15 contains various provisions related to the use of automatic on-board recording devices. The requirements of §§ 395.15(i)(4) and (i)(7) became effective on October 2, 1989. Since this date has passed, the words ''No later than October 2, 1989'' are unnecessary and are being removed.

*Equivalent to Periodic Inspection (Section 396.23)*

The first sentence of § 396.23(a) incorrectly references the requirements of § 393.17. This sentence should refer to § 396.17, and § 396.23(a) is being amended accordingly.

*Application of the Rules in This Part (Section 397.1)*

Section 397.1(a) refers to ''paragraph (c) of this section,'' which does not exist. Section 397.1(c) was removed on May 19, 1988 [53 FR 18042, at 18058], but the reference to paragraph (c) in paragraph (a) was not revised. Therefore, § 397.1(a) is amended by removing the phrase ''Except as provided in paragraph (c) of this section.''

*Special Agents (Appendix B to Subchapter B)*

Paragraph 3 of appendix B to subchapter B defines the term ''special agent,'' in part by listing the FHWA's statutory authority to regulate motor carrier safety. The list is out of date, and is therefore being amended to reflect the agency's current authority and the recent recodification of title 49, United States Code. Paragraph 3 also refers to the Director of the Bureau of Motor Carrier Safety, a position that no longer exists, when it should refer to the Associate Administrator for Motor Carriers. Paragraph 3 is being amended to correct this reference.

**Rulemaking Analyses and Notices**

This final rule makes only minor, technical corrections to the Federal Motor Carrier Safety Regulations. The rule deletes a provision for which there is no authority, corrects or removes inaccurate references, and replaces outdated language with terms more consistent with current statutory authority. Substantive regulatory standards are not changed in any way. Therefore, the FHWA finds good cause to adopt the rule without prior notice or opportunity for public comment [5 U.S.C. 553(b)]. The DOT's regulatory policies and procedures also authorize promulgation of the rule without prior notice because it is anticipated that such action would not result in the receipt of useful information. The FHWA is making the rule effective upon publication in the **Federal Register** because it imposes no new burdens and merely corrects or clarifies existing regulations [5 U.S.C. 553(d)].

**Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. Since this rulemaking action makes only technical corrections to the current regulations, it is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, and since this rulemaking action makes only technical corrections to the current regulations, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12612 (Federalism Assessment)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

**Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

**Paperwork Reduction Act**

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

**National Environmental Policy Act**

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 49 CFR Parts 325, 350, 382, 385, 387, 390, 391, 392, 395, 396, and 397**

Highway safety, Highways and roads, Motor carriers, Motor vehicle safety.

Issued on: July 19, 1995.

**Rodney E. Slater,**

*Federal Highway Administrator.*

In consideration of the foregoing and under the authority of 42 U.S.C. 4917 and 49 U.S.C. 104, 501 et seq., 521 et seq., 5101 et seq., 5113, 5901 et seq., 31101–31104, 31108, 31131 et seq., 31161, 31301 et seq., 31501 et seq.; and 49 CFR 1.48, the FHWA amends title 49, Code of Federal Regulations, Chapter III, as follows:

**CHAPTER III—[AMENDED]**

1. Chapter III is amended by substituting the term ''he/she'' for each appearance of the word ''he'' in the chapter except in the phrase ''he or she.''

2. Chapter III is amended by substituting the term ''his/her'' for each appearance of the word ''his'' in the chapter except in the phrase ''his or her.''

3. Chapter III is amended by substituting the term ''him/her'' for each appearance of the word ''him'' in the chapter except in the phrase ''him or her.''

4. Chapter III is amended by substituting the term ''himself/herself'' for each appearance of the word ''himself'' in the chapter.

**§§ 325.13, 388.5, and Appendix B [Amended]**

5. In the list below, for each section indicated in the left column, remove the title indicated in the middle column wherever it appears in the section, and add the title indicated in the right column:

| Section | Remove | Add |
|---|---|---|
| 325.13(d)(3) . | Bureau of Motor Carrier Safety. | Office of Motor Carriers. |
| 388.5(a) ..... | Bureau of Motor Carrier Safety. | Office of Motor Carriers. |
| Appendix B to Subchapter B, paragraph 3. | Bureau of Motor Carrier Safety (BMCS). | Office of Motor Carriers. |

6. Section 325.93 is amended by revising paragraph (b) to read as follows:

**§ 325.93 Tires.**

* * * * *

(b) Paragraph (a) of this section does not apply to a motor vehicle operated on a tire having a tread pattern of the type specified in that paragraph, if the motor carrier who operates the motor vehicle demonstrates to the satisfaction of the Associate Administrator for Motor Carriers or his/her designee that either—

(1) The tire did not have that type of tread pattern when it was originally manufactured or newly remanufactured; or

(2) The motor vehicle generates a maximum sound level reading of 90 dB(A) or less when measured at a standard test site for highway operations at a distance of 15.3 meters (50 feet) and under the following conditions:

(i) The measurement must be made at a time and place and under conditions specified by the Associate Administrator or his/her designee.

(ii) The motor vehicle must be operated on the same tires that were installed on it when the inspection specified in paragraph (a) of this section occurred.

(iii) The motor vehicle must be operated on a highway having a posted speed limit of more than 56.3 kph (35 mph).

(iv) The sound level measurement must be made while the motor vehicle is operating at the posted speed limit.

## PART 350—[AMENDED]

7. The authority citation for part 350 is revised to read as follows:

**Authority:** 49 U.S.C. 31101–31104, 31108, 31136, 31140–31141, 31161, 31310–31311, 31502; and 49 CFR 1.48.

8. In part 350, appendix C, paragraph 3(e) is revised to read as follows:

### Appendix C to Part 350—Tolerance Guidelines for Adopting Compatible State Rules and Regulations

* * * * *

3. Tolerance Guidelines for State Rules and Regulations Where the U.S. Department of Transportation Regulations do not Apply

* * * * *

(e) Regulatory exemptions based on the distance a motor carrier or driver operates from their home terminal are not deemed to be compatible. This prohibition does not apply to those exemptions already contained in the Federal Motor Carrier Safety Regulations nor to the extension of the mileage radius exemption contained in 49 CFR 395.1(e) from 100 to 150 miles.

* * * * *

9. Section 350.3 is amended by revising the definition for *Motor carrier* to read as follows:

**§ 350.3 Definitions.**

* * * * *

*Motor carrier* has the same meaning such term has in § 390.5.

* * * * *

## PART 382—[AMENDED]

10. The authority citation for part 382 is revised to read as follows:

**Authority:** 49 U.S.C. 31133, 31136, 31301 et seq., 31502; and 49 CFR 1.48.

## PART 385—[AMENDED]

11. The authority citation for part 385 is revised to read as follows:

**Authority:** 49 U.S.C. 104, 504, 521(b)(5)(A), 5113, 31136, 31144, 31502; and 49 CFR 1.48.

**§ 385.23 [Amended]**

12. Section 385.23 is amended by removing the reference ''§ 385.23'' and replacing it with ''§ 385.21.''

## PART 387—[AMENDED]

13. The authority citation for part 387 is revised to read as follows:

**Authority:** 49 U.S.C. 31138 and 31139; and 49 CFR 1.48.

**§ 387.31 [Amended]**

14. Section 387.31 is amended by removing paragraph (b)(3)(i) and redesignating paragraphs (b)(3) (ii) and (iii) as paragraphs (b)(3) (i) and (ii), respectively.

## PART 390—[AMENDED]

15. The authority citation for Part 390 is revised to read as follows:

**Authority:** 49 U.S.C. 5901–5907, 31132, 31133, 31136, 31502, and 31504; and 49 CFR 1.48.

16. Section 390.5 is amended by revising paragraph (1)(iii) of the definition of *Accident*; by replacing the word ''vehicle'' with ''motor vehicle'' in two places in the definition of *Charter transportation of passengers*; by replacing the word ''vehicle'' with ''motor vehicle'' in four places in the definition of *Commercial motor vehicle* except in the phrase ''gross vehicle weight rating''; by replacing the words ''wheels of the vehicle'' with ''wheels of the motor vehicle'' in the definition of *Driveaway-towaway operation*; by replacing the word ''vehicles'' with ''motor vehicles'' in paragraph (2) of the definition of *Emergency;* by replacing the word ''vehicle'' with ''commercial motor vehicle'' and replacing the reference ''§ 390.3(g)'' with ''§ 391.2(d)'' in the definition of *Exempt intracity zone*; by replacing the words ''vehicle'' and ''motor vehicle'' with ''commercial motor vehicle'' in four places in the definition of *Farm-to-market agricultural transportation*; by replacing the words ''vehicle'' and ''motor vehicle'' with ''commercial motor vehicle'' in two places in the definition of *Farm vehicle driver*; by replacing the word ''vehicle'' with ''motor vehicle'' in the definition of *Gross combination weight rating*; by replacing the words ''single vehicle'' with ''single motor vehicle'' in the definition of *Gross vehicle weight rating*; by replacing the words ''transport vehicle'' with ''transport motor vehicle'' in the definition of *Hazardous substance*; by replacing the word ''vehicle'' with ''commercial motor vehicle'' in two places in the definition of *Radar detector*; by replacing the words ''towing unit'' and ''towing vehicle'' with ''towing motor vehicle'' in four places in the definition of *Trailer*; by replacing the word ''motor vehicle'' with ''commercial motor vehicle'' in the definition of *Truck;* by replacing the word ''motor vehicle'' with ''commercial motor vehicle'' in the definition of *Truck tractor*. Section 390.5 is further amended by revising the definition of *Employee* and the definition of *Principal place of business* to read as follows:

**§ 390.5 Definitions.**

* * * * *

*Accident* means—

(1) * * *

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the

scene by a tow truck or other motor vehicle.

* * * * *

*Employee* means any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle), a mechanic, and a freight handler. Such term does not include an employee of the United States, any State, any political subdivision of a State, or any agency established under a compact between States and approved by the Congress of the United States who is acting within the course of such employment.

* * * * *

*Principal place of business* means a single location designated by the motor carrier, normally its headquarters, where records required by parts 387, 390, 391, and 395 of this subchapter will be maintained and where records required by part 382 must be made available for inspection within two business days after a request has been made by an authorized representative of the Federal Highway Administration. Provisions in this subchapter are made for maintaining certain records at locations other than the principal place of business.

* * * * *

**§ 390.7 [Amended]**

17. Section 390.7(a) is amended by removing paragraph (a)(3) and redesignating paragraph (a)(4) as paragraph (a)(3).

**§ 390.15 [Amended]**

18. Section 390.15(b)(1)(vi) is amended by replacing the word ''vehicles'' with ''motor vehicles.''

**§ 390.19 [Amended]**

19. Section 390.19 is amended by replacing the words ''motor vehicles'' with ''commercial motor vehicles.''

**§ 390.21 [Amended]**

20. In § 390.21, amend paragraphs (b)(1), (b)(2), (b)(4), (b)(5), (c)(1), (c)(3), (d), (e)(1), (e)(2) introductory text, (e)(2)(ii), (e)(2)(iv)(B)(2), (e)(2)(iv)(C), and (e)(2)(v) by replacing the words ''vehicle'' and ''motor vehicle'' with ''commercial motor vehicle.''

**§ 390.23 [Amended]**

21. Section 390.23(a)(3)(i) is amended by replacing the word ''vehicles'' with ''motor vehicles.''

22. Section 390.23(b) is amended by replacing the words ''driver or vehicle'' with ''driver or commercial motor vehicle.''

**§ 390.27 [Amended]**

23. Section 390.27 is amended by revising the section heading to read ''Locations of regional offices of motor carriers.''.

**§ 390.33 [Amended]**

24. Section 390.33 is amended by revising the section heading to read ''Commercial motor vehicles used for purposes other than defined.'' ; and by replacing the words ''motor vehicle'' with ''commercial motor vehicle'' in seven places in the text of the section.

## PART 391—[AMENDED]

25. The authority citation for part 391 is revised to read as follows:

**Authority:** 49 U.S.C. 504, 31133, 31136, and 31502; and 49 CFR 1.48.

**§§ 391.1, 391.11, 391.15, 391.21, 391.25, 391.31, 391.33, 391.41, 391.43, 391.49, 391.51, 391.61, 391.63, 391.65, 391.67, 391.69, 391.71, and 391.73 [Amended]**

26. In part 391, make nomenclature changes as follows:

(a) In the list below, for each section indicated in the left column, remove the word or words indicated in the middle column wherever they appear in the section, and add the words indicated in the right column:

| Section | Remove | Add |
|---|---|---|
| 391.1(a) | Motor vehicles | Commercial motor vehicles. |
| 391.11(a) | Motor vehicle (in four places) | Commercial motor vehicle. |
| 391.11(b) introductory paragraph | Motor vehicle | Commercial motor vehicle. |
| 391.11(b)(3) | Motor vehicle | Commercial motor vehicle. |
| 391.11(b)(4) | Motor vehicle (in two places) | Commercial motor vehicle. |
| 391.11(b)(5) | Motor vehicle | Commercial motor vehicle. |
| 391.11(b)(6) | Motor vehicle | Commercial motor vehicle. |
| 391.11(b)(9) | Motor vehicle | Commercial motor vehicle. |
| 391.15(c)(2)(ii) | Motor vehicle | Commercial motor vehicle. |
| 391.15(c)(2)(v) | Motor vehicle | Commercial motor vehicle. |
| 391.21(a) | Motor vehicle | Commercial motor vehicle. |
| 391.21(b)(5) | Motor vehicle | Commercial motor vehicle. |
| 391.25 | Motor vehicle | Commercial motor vehicle. |
| 391.31(a) | Motor vehicle | Commercial motor vehicle. |
| 391.31(b) | Vehicle | Commercial motor vehicle. |
| 391.31(c) introductory paragraph | Motor vehicle (in two places) | Commercial motor vehicle. |
| 391.31(c)(3) | Vehicle | Commercial motor vehicle. |
| 391.31(c)(4) | Vehicles | Commercial motor vehicles. |
| 391.31(c)(5) | Vehicle | Commercial motor vehicle. |
| 391.31(c)(5) | Vehicles | Motor vehicles. |
| 391.31(c)(6) | Vehicle | Commercial motor vehicle. |
| 391.31(c)(7) | Vehicle | Commercial motor vehicle. |
| 391.31(c)(8) | Vehicle | Commercial motor vehicle. |
| 391.33(a) introductory paragraph | Motor vehicle | Commercial motor vehicle. |
| 391.33(a)(1) | Motor vehicles | Commercial motor vehicles. |
| 391.33(a)(1) | Motor vehicle | Commercial motor vehicle. |
| 391.41(a) | Motor vehicle (in two places) | Commercial motor vehicle. |
| 391.41(b) introductory paragraph | Motor vehicle | Commercial motor vehicle. |
| 391.41(b)(2)(ii) | Motor vehicle (in two places) | Commercial motor vehicle. |
| 391.41(b)(5) | Motor vehicle | Commercial motor vehicle. |
| 391.41(b)(6) | Motor vehicle | Commercial motor vehicle. |
| 391.41(b)(7) | Motor vehicle | Commercial motor vehicle. |
| 391.41(b)(8) | Motor vehicle | Commercial motor vehicle. |
| 391.41(b)(9) | Motor vehicle | Commercial motor vehicle. |

| Section | Remove | Add |
|---|---|---|
| 391.41(b)(12) | Motor vehicle | Commercial motor vehicle. |
| 391.43(f) | Motor vehicle | Commercial motor vehicle. |
| 391.49(a) | Motor vehicle (in two places) | Commercial motor vehicle. |
| 391.49(d)(3)(i)(A) | Motor vehicle | Commercial motor vehicle. |
| 391.49(e)(4) | Motor vehicle | Commercial motor vehicle. |
| 391.49(g) | Motor vehicle(s) | Commercial motor vehicle(s). |
| 391.51(b)(1) | Motor vehicle | Commercial motor vehicle. |
| 391.51(b)(5) | Motor vehicle | Commercial motor vehicle. |
| 391.51(d)(1) | Motor vehicle | Commercial motor vehicle. |
| 391.51(d)(3) | Motor vehicle | Commercial motor vehicle. |
| 391.51(e) | Motor vehicle | Commercial motor vehicle. |
| 391.51(h)(1) | Motor vehicle | Commercial motor vehicle. |
| 391.61 | Motor vehicle | Commercial motor vehicle. |
| 391.63(a) introductory paragraph | Motor vehicle | Commercial motor vehicle. |
| 391.63(b) | Motor vehicle (in two places) | Commercial motor vehicle. |
| 391.65(a)(2) | Motor vehicle | Commercial motor vehicle. |
| 391.65(a)(2)(iv) | Motor vehicle | Commercial motor vehicle. |
| 391.65(a)(2)(vii) in the form | Vehicle | Commercial motor vehicle. |
| 391.67 introductory paragraph | Articulated motor vehicle | Articulated commercial motor vehicle. |
| 391.69 | Motor vehicle | Commercial motor vehicle. |
| 391.71(a) introductory paragraph | Motor vehicle | Commercial motor vehicle. |
| 391.71(b) introductory paragraph | Vehicle | Commercial motor vehicle. |
| 391.73 | Motor vehicle | Commercial motor vehicle. |

(b) In § 391.43(e) in the ''Instructions for Performing and Recording Physical Examinations'' under the headings *General information, Throat, Blood pressure, Abnormal masses, Tenderness, Genito-urinary, Extremities,* and *Diabetes* replace the words ''motor vehicle'' with the words ''commercial motor vehicle'' each place they appear.

27. Section 391.2 is amended by revising paragraphs (a), (b), (c) and (d)(4) to read as follows:

**§ 391.2 General exemptions.**

(a) *Farm custom operation.* The rules in this part do not apply to a driver who drives a commercial motor vehicle controlled and operated by a person engaged in custom-harvesting operations, if the commercial motor vehicle is used to—

(1) Transport farm machinery, supplies, or both, to or from a farm for custom-harvesting operations on a farm; or

(2) Transport custom-harvested crops to storage or market.

(b) *Apiarian industries.* The rules in this part do not apply to a driver who is operating a commercial motor vehicle controlled and operated by a beekeeper engaged in the seasonal transportation of bees.

(c) *Certain farm vehicle drivers.* The rules in this part do not apply to a farm vehicle driver except a farm vehicle driver who drives an articulated (combination) commercial motor vehicle, as defined in § 390.5. (For limited exemptions for farm vehicle drivers of articulated commercial motor vehicles, see § 391.67.)

(d) * * *

(4) Does not operate a commercial motor vehicle used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under the Hazardous Materials Transportation Act (49 U.S.C. 5101 *et seq.*); and

* * * * *

28. Section 391.11 is amended by revising paragraph (b)(7) to read as follows:

**§ 391.11 Qualifications of drivers.**

* * * * *

(b) * * *

(7) Has a currently valid commercial motor vehicle operator's license issued only from one State or jurisdiction.

* * * * *

29. Footnote number one in §§ 391.15(c)(2)(ii) and (iii) and in § 391.41(b)(12) is revised to read ''[1] A copy of the Schedule I drugs and other substances may be obtained by writing to the Director, Office of Motor Carrier Research and Standards, Washington, DC 20590, or to any Regional Office of Motor Carriers of the Federal Highway Administration at the address given in § 390.27 of this subchapter.''

30. Section 391.15(d)(2)(iv) is revised to read as follows:

**§ 391.15 Disqualification of drivers.**

* * * * *

(d) * * *

(2) * * *

(iv) *Special rule for hazardous materials and passenger offenses.* A driver is disqualified for a period of not less than 180 days nor more than two years if the driver is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (49 U.S.C. 5101 *et seq.*), or while operating commercial motor vehicles designed to transport more than 15 passengers, including the driver. A driver is disqualified for a period of not less than three years nor more than five years if, during any 10-year period, the driver is convicted of any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act, or while operating commercial motor vehicles designed to transport more than 15 passengers, including the driver.

31. In § 391.27, the form in paragraph (c) is revised to read as follows:

**§ 391.27 Record of violations.**

* * * * *

(c) * * *

Driver's Certification

I certify that the following is a true and complete list of traffic violations (other than parking violations) for which I have been convicted or forfeited bond or collateral during the past 12 months.

Date of conviction Offense
Location Type of motor vehicle operated

If no violations are listed above, I certify that I have not been convicted or forfeited bond or collateral on account of any violation required to be listed during the past 12 months.

(Date of certification) (Driver's signature)

(Motor carrier's name)

(Motor carrier's address)

(Reviewed by: Signature) (Title)

32. Part 391 is amended by revising the heading for subpart D to read ''Tests''.

33. In § 391.43, the text of paragraph (g) preceding the certificate is revised to read as follows:

**§ 391.43 Medical examination; certificate of physical examination.**

* * * * *

(g) The medical examiner's certificate shall be substantially in accordance with the following form:

* * * * *

34. In § 391.47, paragraphs (c), (d) (1) and (2), and (f) are amended by replacing the word ''Director'' with ''Director, Office of Motor Carrier Research and Standards.''

35. Section 391.49 is amended by revising paragraphs (c)(2)(v), (c)(3) introductory text, and (c)(3) (vii) and (viii) to read as follows:

**§ 391.49 Waiver of certain physical defects.**

* * * * *

(c) * * *

(2) * * *

(v) Number of years experience operating the type of commercial motor vehicle(s) requested in the letter of application and total years of experience operating all types of motor vehicles.

(3) Description of the commercial motor vehicle(s) the driver applicant intends to drive:

* * * * *

(vii) For commercial motor vehicles designed to transport passengers, indicate the seating capacity of the commercial motor vehicle; and

(viii) Description of any modification(s) made to the commercial motor vehicle for the driver applicant; attach photograph(s) where applicable.

* * * * *

**§ 391.67 [Amended]**

36. Section 391.67 is amended by revising the section heading to read ''Farm vehicle drivers of articulated commercial motor vehicles.'' ; and by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

37. Section 391.68 is revised to read as follows:

**§ 391.68 Private motor carrier of passengers (nonbusiness).**

The following rules in this part do not apply to a private motor carrier of passengers (nonbusiness) and their drivers:

(a) Section 391.11 (b)(8), (b)(10), and (b)(11), (relating to driver qualifications in general).

(b) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of, drivers).

(c) Subpart D (relating to road tests).

(d) So much of §§ 391.41 and 391.45 as require a driver to be medically examined and to have a medical examiner's certificate on his/her person.

(e) Subpart F (relating to maintenance of files and records).

(f) Subpart H (relating to controlled substances testing).

**§ 391.71 [Amended]**

38. Section 391.71 is amended by revising the section heading to read ''Intrastate drivers of commercial motor vehicles transporting Class 3 combustible liquids.''

**§ 391.85 [Amended]**

39. Section 391.85 is amended in the definition of *Commercial motor vehicle* by replacing the word ''vehicle'' with ''motor vehicle'' in each of the four places it appears.

## PART 392—[AMENDED]

40. The authority citation for part 392 continues to read as follows:

**Authority:** 49 U.S.C. 31136 and 31502; and 49 CFR 1.48.

41. Part 392 is amended by revising the part heading to read ''Driving of Commercial Motor Vehicles''; by revising the heading for subpart B to read ''Driving of Commercial Motor Vehicles''; and by revising the heading for subpart C to read ''Stopped Commercial Motor Vehicles''.

**§ 392.4 [Amended]**

42. In § 392.4(a)(1), footnote number one is revised to read ''[1] A copy of the Schedule I drugs and other substances may be obtained by writing to the Director, Office of Motor Carrier Research and Standards, Washington, DC 20590, or to any Regional Office of Motor Carriers of the Federal Highway Administration at the address given in § 390.27 of this subchapter.''

**§§ 392.1, 392.2, 392.3, 392.4, 392.6, 392.7, 392.8, 392.9, 392.10, 392.11, 392.13, 392.14, 392.15, 392.16, 392.20, 392.22, 392.24, 392.33, 392.50, 392.51, 392.63, 392.64, 392.66, 392.67, and 392.68 [Amended]**

43. In the list below, for each section indicated in the left column, remove the word or words indicated in the middle column wherever they appear in the section, and add the words indicated in the right column:

| Section | Remove | Add |
|---|---|---|
| 392.1 | Motor vehicles | Commercial motor vehicles. |
| 392.2 | Motor vehicle | Commercial motor vehicle. |
| 392.3 | Vehicle | Commercial motor vehicle. |
| 392.3 | Motor vehicle (in four places) | Commercial motor vehicle. |
| 392.4(a)(4) | Motor vehicle | Commercial motor vehicle. |
| 392.4(c) | Motor vehicle | Commercial motor vehicle. |
| 392.6 | Motor vehicle | Commercial motor vehicle. |
| 392.6 | Vehicle (in two places) | Commercial motor vehicle. |
| 392.7 | Motor vehicle | Commercial motor vehicle. |
| 392.8 | Motor vehicle | Commercial motor vehicle. |
| 392.9(a) Introductory paragraph | Motor vehicle (in two places) | Commercial motor vehicle. |
| 392.9(a)(1) | Vehicle's | Commercial motor vehicle's. |
| 392.9(a)(2) | Vehicle's (in two places) | Commercial motor vehicle's. |
| 392.9(a)(3) | Vehicle's (in two places) | Commercial motor vehicle's. |
| 392.9(b)(1) | Vehicle | Commercial motor vehicle. |
| 392.9(b)(2) | Vehicle's (in two places) | Commercial motor vehicle's. |
| 392.9(b)(3) | Vehicle's (in two places) | Commercial motor vehicle's. |
| 392.9(b)(3)(ii) | Vehicle | Commercial motor vehicle. |
| 392.9(b)(3)(iii) | Vehicle | Commercial motor vehicle. |
| 392.9(b)(4) | Vehicle (in two places) | Commercial motor vehicle. |
| 392.10(a) introductory paragraph | Motor vehicle | Commercial Motor vehicle. |
| 392.10(a) introductory paragraph | Vehicle (in three places) | Commercial motor vehicle. |
| 392.10(a)(2) | Motor vehicle | Commercial motor vehicle. |
| 392.10(a)(3) | Motor vehicle | Commercial motor vehicle. |

| Section | Remove | Add |
|---|---|---|
| 392.10(b)(3) | Vehicle | Commercial motor vehicle. |
| 392.11 | Motor vehicle (in two places) | Commercial motor vehicle. |
| 392.13 | Motor vehicle (in two places) | Commercial motor vehicle. |
| 392.14 | Motor vehicle (in two places) | Commercial motor vehicle. |
| 392.14 | Vehicle (in two places | Commercial motor vehicle. |
| 392.15(a) | Motor vehicle, vehicle | Commercial motor vehicle. |
| 392.15(b) | Vehicle (in two places) | Commercial motor vehicle. |
| 392.15(c) | Vehicle (in two places | Commercial motor vehicle. |
| 392.15(d) | Vehicles | Commercial motor vehicles. |
| 392.15(e) | Vehicles | Motor vehicles. |
| 392.16 | Motor vehicle | Commercial motor vehicle. |
| 392.20 | Motor vehicle, vehicle | Commercial motor vehicle. |
| 392.22(a) | Motor vehicle | Commercial motor vehicle. |
| 392.22(a) | Vehicle (in three places) | Commercial motor vehicle. |
| 392.22(b)(1) introductory text | Vehicle (in two places) | Commercial motor vehicle. |
| 392.22(b)(1)(i) | Vehicle (in two places) | Commercial motor vehicle. |
| 392.22(b)(1)(ii) | Vehicle (in two places) | Commercial motor vehicle. |
| 392.22(b)(1)(iii) | Vehicle (in two places) | Commercial motor vehicle. |
| 392.22(b)(2)(i) | Vehicle (in two places) | Commercial motor vehicle. |
| 392.22(b)(2)(ii) | Vehicle | Commercial motor vehicle. |
| 392.22(b)(2)(iii) | Vehicle | Commercial motor vehicle. |
| 392.22(b)(2)(iv) | Motor vehicle, vehicle | Commercial motor vehicle. |
| 392.22(b)(2)(v) | Motor vehicle | Commercial motor vehicle. |
| 392.22(b)(2)(v) | Vehicle (in three places) | Commercial motor vehicle. |
| 392.22(b)(2)(vi) | Motor vehicle | Commercial motor vehicle. |
| 392.24 | Motor vehicle | Commercial motor vehicle. |
| 392.33 | Motor vehicle | Commercial motor vehicle. |
| 392.50(a) | Motor vehicle, vehicle | Commercial motor vehicle. |
| 392.50(b) | Vehicle | Commercial motor vehicle. |
| 392.50(c) | Motor vehicle | Commercial motor vehicle. |
| 392.51 | Motor vehicle (in two places) | Commercial motor vehicle. |
| 392.63 | Vehicle | Motor vehicle. |
| 392.64 | Motor vehicle | Commercial motor vehicle. |
| 392.67 | Vehicle | Commercial motor vehicle. |
| 392.68 | Motor vehicle | Commercial motor vehicle. |

**§ 392.13 [Amended]**

44. Section 392.13 is amended by revising the section heading to read ''Drawbridges; slowing down of commercial motor vehicles.'' and by deleting the word ''other'' in the text of the section.

**§ 392.20 [Amended]**

45. Section 392.20 is amended by revising the section heading to read ''Unattended commercial motor vehicles; precautions.''

**§ 392.22 [Amended]**

46. Section 392.22 is amended by revising the section heading to read ''Emergency signals; stopped commercial motor vehicles.''

**§ 392.25 [Amended]**

47. Section 392.25 is amended by replacing the words ''motor vehicle'' each place they appear, except in the term ''cargo tank motor vehicle,'' with the words ''commercial motor vehicle.''

48. Section 392.60 is revised to read as follows:

**§ 392.60 Unauthorized persons not to be transported.**

(a) Unless specifically authorized in writing to do so by the motor carrier under whose authority the commercial motor vehicle is being operated, no driver shall transport any person or permit any person to be transported on any commercial motor vehicle other than a bus. When such authorization is issued, it shall state the name of the person to be transported, the points where the transportation is to begin and end, and the date upon which such authority expires. No written authorization, however, shall be necessary for the transportation of:

(1) Employees or other persons assigned to a commercial motor vehicle by a motor carrier;

(2) Any person transported when aid is being rendered in case of an accident or other emergency;

(3) An attendant delegated to care for livestock.

(b) This section shall not apply to the operation of commercial motor vehicles controlled and operated by any farmer and used in the transportation of agricultural commodities or products thereof from his/her farm or in the transportation of supplies to his/her farm.

49. Section 392.64 is amended by revising the section heading to read ''Riding within closed commercial motor vehicles without proper exits.''

50. Section 392.66 is revised to read as follows:

**§ 392.66 Carbon monoxide; use of commercial motor vehicle when detected.**

(a) No person shall dispatch or drive any commercial motor vehicle or permit any passengers thereon, when the following conditions are known to exist, until such conditions have been remedied or repaired:

(1) Where an occupant has been affected by carbon monoxide;

(2) Where carbon monoxide has been detected in the interior of the commercial motor vehicle;

(3) When a mechanical condition of the commercial motor vehicle is discovered which would be likely to produce a hazard to the occupants by reason of carbon monoxide.

(b) [Reserved]

**§ 392.67 [Amended]**

51. Section 392.67 is amended by revising the section heading to read ''Heater, flame-producing; on commercial motor vehicle in motion.''

## PART 395—[AMENDED]

52. The authority citation for part 395 is revised to read as follows:

**Authority:** 49 U.S.C. 31133, 31136, and 31502; and 49 CFR 1.48.

53. Section 395.1(b) is revised to read as follows:

**§ 395.1 Scope of rules in this part.**

* * * * *

(b) Adverse driving conditions. (1) Except as provided in paragraph (i)(2) of this section, a driver who encounters adverse driving conditions, as defined in § 395.2, and cannot, because of those conditions, safely complete the run within the 10-hour maximum driving time permitted by § 395.3(a) may drive and be permitted or required to drive a commercial motor vehicle for not more than 2 additional hours in order to complete that run or to reach a place offering safety for the occupants of the commercial motor vehicle and security for the commercial motor vehicle and its cargo. However, that driver may not drive or be permitted to drive—

(i) For more than 12 hours in the aggregate following 8 consecutive hours off duty; or

(ii) After he/she has been on duty 15 hours following 8 consecutive hours off duty.

(2) *Emergency conditions.* In case of any emergency, a driver may complete his/her run without being in violation of the provisions of the regulations in this part, if such run reasonably could have been completed absent the emergency.

* * * * *

54. Section 395.1(d)(2) is amended by replacing the words ''specially constructed oil well servicing vehicles'' with ''commercial motor vehicles which are specially constructed to service oil wells.''

**§ 395.2 [Amended]**

55. Section 395.2 is amended by replacing the word ''vehicle'' with ''commercial motor vehicle'' in the definition of *Automatic on-board recording device;* by replacing the word ''vehicle'' with ''commercial motor vehicle'' each place it appears in paragraphs (5) and (6) of the definition of *On duty time;* and by redesignating paragraph (10) as paragraph (9) of the definition of *On duty time.*

56. In § 395.3, the section heading and paragraph (b) are revised to read as follows:

**§ 395.3 Maximum driving time.**

* * * * *

(b) No motor carrier shall permit or require a driver of a commercial motor vehicle to drive, nor shall any driver drive, regardless of the number of motor carriers using the driver's services, for any period after—

(1) Having been on duty 60 hours in any 7 consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week; or

(2) Having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week.

57. Section 395.8 is amended by revising paragraphs (f)(5) and (6); and paragraphs (h)(2) through (h)(4) to read as follows:

**§ 395.8 Driver's record of duty status.**

* * * * *

(f) * * *

(5) *Commercial motor vehicle identification.* The driver shall show the number assigned by the motor carrier or State and the license number of each commercial motor vehicle operated during each 24-hour period on his/her record of duty status. The driver of an articulated (combination) commercial motor vehicle shall show the number assigned by the motor carrier or the State and the license number of each motor vehicle used in each commercial motor vehicle combination operated during that 24-hour period on his/her record of duty status.

(6) *Name of motor carrier.* The name(s) of the motor carrier(s) for which work is performed shall be shown on the form containing the driver's record of duty status. When work is performed for more than one motor carrier during the same 24-hour period, the beginning and finishing time, showing a.m. or p.m., worked for each motor carrier shall be shown after each motor carrier's name. Drivers of leased commercial motor vehicles shall show the name of the motor carrier performing the transportation.

* * * * *

(h) * * *

(2) *Sleeper berth.* A continuous line shall be drawn between the appropriate time markers to record the period(s) of time off duty resting in a sleeper berth, as defined in § 395.2. (If a non-sleeper berth operation, sleeper berth need not be shown on the grid.)

(3) *Driving.* A continuous line shall be drawn between the appropriate time markers to record the period(s) of driving time, as defined in § 395.2.

(4) *On duty not driving.* A continuous line shall be drawn between the appropriate time markers to record the period(s) of time on duty not driving specified in § 395.2.

* * * * *

**§ 395.8 [Amended]**

58. The paragraph *Graph Grid (Midnight to Midnight Operation)* following the executed specimen grid illustration at § 395.8(k)(2) is amended by replacing the term ''vehicle condition report'' with the term ''driver vehicle inspection report.''

**§ 395.13 [Amended]**

59. In the list below, for each section indicated in the left column, remove the word or words indicated in the middle column wherever they appear in the section, and add the words indicated in the right column:

| Section | Remove | Add |
|---|---|---|
| 395.13(c)(1)(i) | Motor vehicle | Commercial motor vehicle. |
| 395.13(c)(1)(ii) | Motor vehicle | Commercial motor vehicle. |
| 395.13(d)(1) | Motor vehicle | Commercial motor vehicle. |
| 395.13(d)(2) | Motor vehicle | Commercial motor vehicle. |
| 395.13(d)(4) | Motor vehicles | Commercial motor vehicles. |

60. Section 395.15 is amended by revising paragraphs (d)(2), the introductory text of paragraph (g); paragraphs (i)(2), (4), and (7); and paragraph (j)(2)(iv) to read as follows:

**§ 395.15 Automatic on-board recording devices.**

* * * * *

(d) * * *

(2) Motor carriers are permitted to use location codes in lieu of the requirements of paragraph (d)(1) of this section. A list of such codes showing all possible location identifiers shall be carried in the cab of the commercial motor vehicle and available at the motor carrier's principal place of business. Such lists shall be made available to an enforcement official on request.

* * * * *

(g) *On-board information.* Each commercial motor vehicle must have on-board the commercial motor vehicle

an information packet containing the following items:

* * * * *

(i) * * *

(2) The automatic on-board recording device permits duty status to be updated only when the commercial motor vehicle is at rest, except when registering the time a commercial motor vehicle crosses a State boundary;

* * * * *

(4) The automatic on-board recording device warns the driver visually and/or audibly that the device has ceased to function. Devices installed and operational as of October 31, 1988, and authorized to be used in lieu of the handwritten record of duty status by the FHWA are exempted from this requirement.

* * * * *

(7) The on-board recording device/system identifies sensor failures and edited data when reproduced in printed form. Devices installed and operational as of October 31, 1988, and authorized to be used in lieu of the handwritten record of duty status by the FHWA are exempted from this requirement.

* * * * *

(j) * * *

(2) * * *

(iv) The motor carrier or driver has tampered with or otherwise abused the automatic on-board recording device on any commercial motor vehicle.

## PART 396—[AMENDED]

61. The authority citation for part 396 is revised to read as follows:

**Authority:** 49 U.S.C. 31133, 31136, and 31502; 49 CFR 1.48.

62. Section 396.23 is amended by revising paragraph (a) to read as follows:

**§ 396.23 Equivalent to periodic inspection.**

(a) The motor carrier may meet the requirements of § 396.17 through a State or other jurisdiction's roadside inspection program. The inspection must have been performed during the preceding 12 months. In using the roadside inspection, the motor carrier would need to retain a copy of an annual inspection report showing that the inspection was performed in accordance with the minimum periodic inspection standards set forth in appendix G to this subchapter. When accepting such an inspection report, the motor carrier must ensure that the report complies with the requirements of § 396.21(a).

* * * * *

## PART 397—[AMENDED]

63. The authority citation for part 397 continues to read as follows:

**Authority:** 49 U.S.C. 5101 et seq.; and 49 CFR 1.48.

64. Section 397.1 is amended by revising paragraph (a) to read as follows:

**§ 397.1 Application of the rules in this part.**

(a) The rules in this part apply to each motor carrier engaged in the transportation of hazardous materials by a motor vehicle which must be marked or placarded in accordance with § 177.823 of this title and to—

(1) Each officer or employee of the motor carrier who performs supervisory duties related to the transportation of hazardous materials; and

(2) Each person who operates or who is in charge of a motor vehicle containing hazardous materials.

* * * * *

65. In appendix B to subchapter B, paragraph 3 is revised to read as follows:

## APPENDIX B TO SUBCHAPTER B—SPECIAL AGENTS

* * * * *

3. *Definition of special agent.* Federal Highway Administration (FHWA) employees charged with enforcing 42 U.S.C. 4917 and 49 U.S.C. 104, 501 et seq., 521 et seq., 5101 et seq., 5901 et seq., 31101–31104, 31108, 31131 et seq., 31161, 31301 et seq., and 31501 *et seq.*, including employees within the Office of Motor Carriers and such other persons as the Federal Highway Administrator or the Associate Administrator for Motor Carriers may specify in writing, in possession of credentials issued by the FHWA, are special agents. They are hereby authorized to inspect and copy records and to inspect and examine lands, buildings, and equipment to the manner and extent provided by law.

* * * * *

[FR Doc. 95–18382 Filed 7–27–95; 8:45 am]

BILLING CODE 4910–22–P

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## National Highway Traffic Safety Administration

## 49 CFR Part 571

**[Docket No. 88–06, Notice 24]**

**RIN 2127–AE49**

## Federal Motor Vehicle Safety Standards; Side Impact Protection—Light Trucks, Buses and Multipurpose Passenger Vehicles

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This rule amends Federal Motor Vehicle Safety Standard No. 214, ''Side Impact Protection,'' to extend its dynamic testing requirements to light trucks, multipurpose passenger vehicles and buses with a gross vehicle weight rating (GVWR) of 6,000 pounds or less. (Light trucks, multipurpose passenger vehicles and buses are hereinafter referred to as LTVs.) The dynamic testing requirements currently apply to passenger cars only. This rule extends the dynamic procedures now used to test passenger cars, without modification, to LTVs. Based on current vehicle sales data, the agency estimates that the percentage of LTVs will increase significantly in the future. Small LTVs, which are potentially vulnerable in side crashes, will comprise much of the LTV fleet by the year 2000. This extension ensures these vehicles provide side impact protection for the same crash conditions under which passenger cars provide such protection. It also furthers the goal of the NHTSA Authorization Act of 1991 (sections 2500–2509 of the Intermodal Surface Transportation Efficiency Act (''ISTEA'')), which directed NHTSA to initiate rulemaking on LTV side impact safety.

**DATES:** This rule is effective on September 1, 1998.

Petitions for reconsideration of the rule must be received by August 28, 1995.

**ADDRESSES:** Petitions for reconsideration should refer to the docket and number of this document and must be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, D.C., 20590.

**FOR FURTHER INFORMATION CONTACT:** Dr. Joseph Kanianthra, Chief, Side and Rollover Crash Protection Division, Office of Vehicle Safety Standards (telephone 202–366–4924), or Ms. Deirdre Fujita, Office of the Chief Counsel (202–366–2992), National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

**SUPPLEMENTARY INFORMATION:**

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## I. Background

This rule amends Federal Motor Vehicle Safety Standard No. 214, ''Side Impact Protection,'' to extend its dynamic testing requirements to LTVs of 6,000 pounds or less gross vehicle weight rating (GVWR). The dynamic testing requirements currently apply to passenger cars. The effect of this amendment is to ensure that smaller LTVs provide side impact protection under the same crash conditions under which passenger cars provide such protection. Larger LTVs and many smaller LTVs will be able to comply with the requirements of this standard without any modification. A notice of proposed rulemaking (NPRM) setting forth the proposals upon which this rule is based was published June 15, 1994 (59 FR 30756).

### *a. Current Requirements*

Standard 214 specifies two sets of requirements for the vehicles to which it applies. The first is composed of quasi-static side door strength requirements for passenger cars and LTVs with a GVWR of 10,000 pounds or less. Those requirements seek to mitigate occupant injuries in side impacts by reducing the extent to which the side door structure of a vehicle is pushed into the occupant compartment during a side impact. Under the requirements, side doors must resist crush forces that are applied against the door's outside surface in a laboratory test. The requirements have applied to passenger cars since January 1, 1973, and were extended to LTVs on September 1, 1993 by a final rule published in the **Federal Register** (56 FR 27427) on June 14, 1991.

The second set of requirements comprise the dynamic testing requirements for passenger cars. NHTSA adopted these requirements in a rule published on October 30, 1990 (55 FR 45722). Under the requirements, a passenger car must provide protection to occupants' thoracic and pelvic regions as measured by the accelerations registered on an instrumented side impact dummy (SID) in a full-scale crash test. In the test, the car (known as the ''target'' car) is struck in the side by a moving deformable barrier (MDB) simulating another passenger car. A phase-in for these new requirements began on September 1, 1993.

The MDB specified in the dynamic test procedure weighs, nominally, 3,000 pounds, and its contact face is 22 inches in height, 66 inches in width and 33 inches high (measured from the ground to the top edge of the barrier face). NHTSA derived the weight of the barrier from the median curb weight of passenger cars (3,181 pounds in 1989) and light trucks (3,958 pounds in 1989). This resulted in a weighted average of 3,423 pounds, which was adjusted downward to account for the then-projected lower weight of vehicles in the 1990's.

Under the test procedure, the front and rear wheels of the MDB are ''crabbed'' at an angle of 27 degrees. With the MDB face oriented at a right angle to the target car, the MDB moves at an angle of 27 degrees and at a speed of 33.5 mph into the side of the target car. These aspects of the procedure were selected so that the test simulates the vehicle kinematics and crash forces that a car would experience in a real world side crash in which it was traveling at 15 mph and was struck perpendicularly by a vehicle traveling at 30 mph. The agency selected the 30 mph/15 mph combination because it represents the mid-range of the speed in real-world side crashes, is the threshold speed for serious chest injury, and because countermeasures (e.g., increased padding and/or reinforced structure) designed for the 30 mph/15 mph combination are likely to be effective in reducing chest injury potential over most of the range of impact speeds encountered in real world side crashes.

### *b. Purpose of Today's Rule*

This rulemaking addresses several NHTSA goals. This rulemaking is a first step towards establishing appropriate dynamic testing requirements for LTVs. An advance notice of proposed rulemaking (53 FR 31716) published in 1988 discussed possible side impact protection requirements for LTVs in areas where requirements had been or were under consideration for passenger cars. That notice announced that NHTSA was considering developing dynamic test procedures and performance requirements for LTVs, similar to those proposed at that time and later adopted for passenger cars.

Amending Standard 214 to address side impact protection for LTVs also furthers the goals of the NHTSA Authorization Act of 1991 (sections 2500–2509 of the Intermodal Surface Transportation Efficiency Act (''ISTEA'')). In 1991, Congress directed the agency to initiate and complete rulemaking to address the possible extension of Standard 214's dynamic side impact requirements for passenger cars to MPVs and trucks with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. In response, NHTSA initiated rulemaking by publishing another advance notice of proposed rulemaking (ANPRM) on June 5, 1992 (57 FR 24009). Section 2502 of ISTEA provides that rulemaking is considered completed when NHTSA either promulgates a final rule or decides not to promulgate a rule. Today's final rule extending Standard 214's dynamic side impact protection requirements to LTVs completes the ISTEA-directed rulemaking.

This rulemaking also marks one of the final phases of the agency's long-term endeavor to extend most of its passenger car standards to LTVs. This effort has resulted in a number of rulemaking actions over the past decade. Among the passenger car safety standards extended to LTVs were Standards 202 (requiring head restraints), 204 (limiting rearward movement of steering column in a crash), 208 (requiring dynamic testing of safety belts for LTVs, and in model year 1999, requiring air bags in 100 percent of LTVs), and 216 (requiring roof crush strength). NHTSA extended those standards to ensure that LTVs are as safe as passenger cars in their crashworthiness performance, since they are being purchased in increasing numbers and are increasingly being used as passenger-carrying vehicles.

These increases can be illustrated by registration data. Data from R.L. Polk show that LTV registrations have increased from 33 million in 1983 to 45 million in 1988, and to 57 million in 1993. From 1983 to 1993, the percentage of light trucks in the compact (now termed ''small and middle'') category increased from 39 percent to 63 percent.

Both Congress' ISTEA directive on LTV side impact protection and NHTSA's endeavor to extend passenger car standards to LTVs stem from the convergence of LTVs and passenger cars in terms of their design and use (with many LTVs in the compact size range used as personal transportation rather than for cargo). With LTVs carrying more and more passengers, there has been a commensurate increase in fatalities. The overall increase in LTV fatalities from 1985 to 1993 was 25 percent. In the 1985 data from NHTSA's Fatal Accident Reporting System (FARS), there were 6,763 fatalities among occupants of LTVs: 115 in small

vans; 722 in large vans; 1,686 in small pickups; 3,342 in large pickups and 898 in other LTVs. By comparison, in 1993, there were 8,487 fatalities that occurred in LTVs. The fatality distribution by LTV vehicle category was: 576 in small vans; 545 in large vans; 2,519 in small pickups; 3,357 in large pickups; and 1,389 in sport utility vehicles.

*c. Side Impact Safety Problem*

The number of fatalities in LTV side impacts increased faster than the overall fatality rate. In 1984, LTV side impacts resulted in 1,197 fatalities; in 1991, there were approximately 1,676 fatalities in side crashes. NHTSA estimates [1] that, by the mid-1990's, side impacts will result in 1,763 fatalities for LTV occupants sitting in the front or second seat, annually. Front seat occupants will account for 1,705 of the fatalities, with occupants of the second seat accounting for 58 fatalities (less than 2 percent). Side impacts are also expected to account for about 6,000 serious but non-fatal injuries to occupants sitting in the front or second seat, annually. These injuries are of a level of 3 to 5 on the Abbreviated Injury Scale (AIS). (An AIS level is a measurement that rates the severity of any injury. For example, a minor injury is rated at the AIS 1 level. At the other extreme, a fatal injury is rated at AIS 6.)

The side impact protection requirements in Standard 214 are two-fold. The quasi-static strength requirements address intrusion-related injuries, such as in narrow object side crashes into poles or trees (fixed objects), by limiting the amount of intrusion. The standard's dynamic requirements primarily address LTV occupant fatalities and serious injuries that are likely to occur due to occupant contact against the side interior of the struck vehicle in a two-vehicle collision. (See Final Regulatory Impact Analysis for the rule adopting dynamic test requirement for passenger cars, Docket number 88–06, notice 8, DOT HS 807–641, August 1990.)

The dynamic side impact requirements address primarily chest and pelvic injury, using dummies that are instrumented with four accelerometers to measure accelerations in the dummy ribs and spine, and pelvic region. The values measured in the ribs and spine are used in determining the ''Thoracic Trauma Index (TTI(d)).'' TTI(d) is an injury criterion that measures the risk of thoracic injury of an occupant in a side impact. The fourth accelerometer, mounted in the pelvic cavity, measures the potential risk for pelvic injury. To meet Standard 214's side impact protection requirements, the TTI(d) and pelvis measurements must be below specified maximum values.[2]

NHTSA estimates that, by the mid-1990's, about 14 percent of the 1,763 LTV fatalities (i.e., 245 fatalities per year) and roughly 14 percent of the 6,000 serious (AIS 3–5) thoracic injuries (i.e., 857 injuries per year) would be due to contacts between an occupant's chest, abdomen, back and pelvis and the struck vehicle's side interior. The agency believes that approximately 88 percent of these fatalities and injuries will occur in side impacts with LTVs, heavy vehicles, and fixed objects, rather than in side impacts with passenger cars. Looking solely at multi-vehicle side impacts between LTVs and other light vehicles, approximately 78 percent of the LTV fatal ''torso'' injuries are caused by other light and heavy trucks, and only 22 percent, by passenger cars (mostly large passenger cars).

## II. The NPRM

Following the ISTEA-directed ANPRM initiating rulemaking on dynamic side impact protection for LTVs, NHTSA published the June 1994 NPRM which set forth the proposal upon which today—s rule is based. The NPRM proposed to extend Standard 214's dynamic side impact protection requirements to LTVs with a GVWR or 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

Under the proposal, all of the provisions in the standard that currently apply to passenger cars would have been extended to LTVs, but the test procedure would have been modified by raising the height and weight of the moving barrier used to strike the tested vehicle. The agency proposed this modification for several reasons. One was the agency's tentative conclusion that ''a simple extension of Standard No. 214's dynamic side impact protection requirements to LTVs would result in few, if any, benefits.'' The agency noted its related concern that a simple extension ''would result in significant compliance costs without concomitant benefits.'' Another reason was the design differences between passenger cars and LTVs, and in the size and weight of striking vehicles that caused the most extensive safety problems in side crashes. The modifications were intended to make the test ''more representative of the side impact crash conditions causing fatalities and serious injuries in LTVs.''

Occupants of LTVs are generally seated higher than those in passenger cars. Because of this, LTV occupants generally face a smaller risk of side impact thoracic injury, than passenger car occupants in a majority of side crashes (i.e., in crashes in which passenger cars are the striking vehicles). If a passenger car (which composes the majority of the current vehicle fleet and represents the most probable striking vehicle) strikes another passenger car in a side impact, the striking vehicle typically pushes the inside door panel of the struck vehicle at a relatively high velocity directly into the thorax of an occupant sitting next to the door. However, if a passenger car strikes an LTV in a side impact, the primary part of the side structure that is pushed inward is more likely to be below the thorax of an adjacent occupant, thereby resulting in smaller injury-producing loads to the occupant's thorax. Further, LTVs typically have higher sill and side structures than passenger cars. Those structures limit the loads transmitted by a passenger car directly to the door, thus reducing the door contact velocity to the occupant.

Because of these differences, the fatality rate for occupants of LTVs in all side impact crashes is less than half of that for passenger cars. The LTV occupant side impact fatality rate per million registered vehicles is 25.7, as compared to 53.3 for passenger cars.

Although NHTSA recognized in the NPRM that ''the problem of thoracic injuries in side impacts is not so great for LTV occupants as it is for passenger car occupants,'' the agency tentatively concluded that side impact protection requirements should apply to LTVs in a manner that would reduce the thorax-related fatalities and serious chest injuries in vehicles struck in side impacts. Most of these casualties would occur in crashes in which a vehicle other than a passenger car is the striking vehicle. (The two types of striking vehicles that are most likely to cause severe chest injuries in side impacts are standard pickups and compact pickups. These vehicles cause 26 percent and 16 percent of all such injuries, respectively.) NHTSA tentatively concluded therefore that it would be appropriate to establish side impact protection requirements for LTVs that simulated the type of multi-vehicle crash that causes the greatest number of

[1] See ''Preliminary Economic Assessment, NPRM for Light Trucks, Buses and Multipurpose Passenger Vehicle Dynamic Side Impact Protection, FMVSS No. 214'' (June 1994), accompanying the June 1994 NPRM, NHTSA Docket 88–06–N23–001.

[2] For the thorax, TTI(d) must not exceed 85 g for passenger cars with four side doors, or 90 g for cars with two side doors. It is generally more difficult for manufacturers to achieve lower TTI(d) for two-door cars than four-door cars, given that the door on a two-door model is typically wider than on a four-door model. For the pelvis, peak lateral acceleration must not exceed 130 g's.

serious injuries to LTV occupants in side crashes. That is, the agency believed that the barrier simulating the striking vehicle and the simulated injury-producing event should reflect attributes of a vehicle larger than a passenger car in terms of its weight and front end profile.

NHTSA also noted in the NPRM that data indicated that many current LTVs, especially the heavier ones, already meet the criteria specified for passenger cars. NHTSA conducted two series of LTV side impact tests similar to the dynamic Standard 214 passenger car test. In the first test series, the agency tested seven LTVs using an MDB that was modified to make it more representative of side crash conditions causing fatalities and serious injuries in light trucks. The weight of the MDB was increased to 4,000 pounds, and the height of the barrier face was raised between 4 and 10 inches. In the second test series, NHTSA tested three small LTVs (1991 Toyota pickup, 1991 Suzuki Sidekick, and 1989 Dodge Ram D–50) and a fourth vehicle representative of a small van (1989 Colt Vista-2WD), using the current dynamic test procedure, including the 3,000 pound MDB specified in Standard 214 for passenger cars. (The Colt Vista was a passenger car version of a vehicle that was then marketed in a four-wheel drive version as an LTV. The agency believes that both versions of the vehicle provide similar side impact protection.) NHTSA believed the four represented ''at risk'' vehicles, i.e., LTVs in the fleet that are most likely to require modifications to meet the passenger car standard. The TTI(d) and pelvic g's for the four vehicles were as follows: Toyota pickup-55/53 g's; Suzuki Sidekick-54/104 g's; Dodge Ram-83/72 g's; Colt Vista-108/69 g's (driver dummy), 111/108 g's (passenger dummy). The Toyota and Suzuki both readily met the requirements. The Dodge marginally passed the thoracic requirement, but readily passed the pelvic requirement. The Colt, which is no longer sold in the United States, failed the thoracic requirement, but readily met the pelvic requirement.

*a. Raising the Height and Weight of the Moving Deformable Barrier (MDB)*

NHTSA proposed in the NPRM to set the height of the MDB within a range of 33 inches to 45 inches, as measured from the ground to the top edge of the barrier face. This represented an increase of up to 12 inches in MDB height as compared to the height specified for passenger car testing (33 inches).

Within the proposed 33 inch to 45 inch range, NHTSA proposed two alternative methods for specifying MDB height. Under the first method, the MDB height would be raised to match the driver H-point of the tested vehicle. This approach focused on attributes of the struck vehicle. Unlike passenger cars, for which the seating heights are very similar, the height of LTV seating positions vary considerably. The agency tentatively concluded that impacting a vehicle at the driver H-point would ensure that LTVs provide thoracic side impact protection when they are struck in the side by another LTV at a height that allows the side door interior to intrude inward at a relatively high velocity toward the chest area of adjacent occupants. Thus, the struck vehicle's side impact safety performance is evaluated at a specific height matching the front end profile of the striking vehicle that has the potential to cause serious chest injuries.

Under the second method, the MDB height would be at the same level for all LTVs, or at the same level for all LTVs within a particular sub-group, e.g., small and large pickups, vans and utility vehicles, with different levels specified for different sub-groups. This approach only focuses on attributes of the striking vehicles, taking into account only the average seating heights of a group of LTVs. Since the heights of the front ends of LTVs vary, specifying a single height that is equally representative of all LTVs would be very difficult. Moreover, specifying a single height raised possible practicability concerns, since a test procedure that specifies a single MDB height that is representative of large pickup trucks might simulate crashes in which compact LTVs could not comply since they have much lower seating heights than the front end heights of large pickup trucks.

NHTSA also proposed to increase the weight of the MDB for LTV testing. As noted above, NHTSA derived the weight of the barrier for passenger car testing from the median curb weight of passenger cars (3,181 pounds in 1989) and light trucks (3,958 pounds in 1989). This resulted in a weighted average of 3,423 pounds, which the agency adjusted downward to account for the then-projected lower weight of vehicles in the 1990's. Based on these considerations, NHTSA derived a nominal barrier weight of 3,000 pounds.

The agency proposed to specify the MDB's weight within a range of 3,000 pounds to 3,800 pounds. The lower end of the range is the current weight of the MDB specified for passenger car testing. The upper end of the range is based on the average weight of striking vehicles in LTV crashes where an LTV occupant had an AIS ≥ 3 torso injury, as observed in 1988–91 NASS data. NHTSA did not propose an MDB weight above 3,800 pounds because of concerns about practicability. In particular, the agency believed that as MDB weight is increased much above 3,600 pounds, there are increasing concerns about the feasibility of smaller LTVs meeting the dynamic test requirements with such a barrier.

Cognizant that it had proposed a wide range of possible modifications to the MDB, NHTSA sought to ''facilitate more focused comments'' with respect to the selection of a single height and weight for the MDB. The agency narrowed the focus by stating that it believed:

> That the combination of raising the MDB to a height in the middle portion of the proposed range, e.g., seven to nine inches above the passenger car barrier height, and increasing its weight to 3,600 pounds would be sufficient to create a dynamic event that is representative of the ones likely to cause serious chest injuries to occupants in the most vulnerable LTVs in real world crashes. 59 FR at 30762.

*b. Response to the NPRM*

The agency received 19 comments on the NPRM. Commenters included vehicle manufacturers (General Motors, Chrysler, Ford, Mazda, Isuzu, Mitsubishi, Toyota, Volkswagen, Nissan and Rover Group), multistage vehicle manufacturers (Starcraft, Flexsteel Industries, and Bornemann Products), and consumer and industry groups (Advocates for Highway and Auto Safety, American Automobile Manufacturers Association, Insurance Institute for Highway Safety, National Association of Independent Insurers, National Truck Equipment Association, and Recreation Vehicle Industry Association).

Of all the commenters, only Advocates for Highway and Auto Safety (Advocates) and the National Association of Independent Insurers (NAII) supported modifying the height and weight of the MDB. Advocates suggested that the MDB weigh 3,800 pounds, have a bumper, and be designed so that the distance from the top of the bumper to the ground is 33 inches and the distance from the top of the barrier face to the ground is 45 inches. Advocates said that such a barrier would represent the weight and height of a larger LTV as the striking vehicle. NAII said the MDB weight should be 3,400 pounds since ''the sales weighted average curb weight of new passenger cars and LTV fleets * * * now averages approximately 3400 pounds.''

The vehicle manufacturers were unanimously opposed to the NPRM, and wanted the rulemaking either terminated or limited to a straight extension of the passenger car side impact protection requirements. The American Automobile Manufacturers Association (AAMA), representing GM, Ford and Chrysler, strongly believed the rulemaking should be terminated. Toyota, Isuzu, and Mazda also believed the rulemaking should be terminated. In the alternative, these commenters, together with Volkswagen and Nissan, said that if NHTSA decided to proceed with a final rule, it should adopt no more than the passenger car test procedures and injury criteria.

The commenters opposing the NPRM raised several main objections:

*1. Equity.* Each raised an equity argument, contending that it is unfair for NHTSA to adopt LTV side impact protection requirements based on test conditions more severe than those used for passenger cars, when LTV occupants currently face a smaller risk of thoracic injury in side impacts as compared to passenger car occupants. AAMA said that NHTSA understated the degree to which LTVs present a smaller risk of injury when the NPRM stated that the side impact fatality rate for occupants of LTVs in side impact crashes is slightly less than half of that for occupants of passenger cars. NHTSA estimated that the LTV occupant side impact fatality rate per million registered vehicles is 25.7, as compared to 53.3 for passenger cars. AAMA stated that these rates were based on all injuries in side impacts, while only thoracic injuries—''the principal focus of this rulemaking''—should be calculated. AAMA said that NHTSA estimated in the NPRM that 245[3] of 1,763 LTV occupant fatalities, or 13.9 percent for LTVs and 37 percent for passenger cars, will be due to thorax injuries. According to AAMA,

> Applying these percentages to the aforementioned fatality rates yields side impact fatality rates due to thoracic injuries per million registered vehicles. For LTVs, this rate is approximately 3.6. For passenger cars, it is approximately 19.7. LTV occupants, therefore, presently face less than one-fifth the risk of receiving a fatal thoracic injury in a side impact compared to passenger car occupants.

[3] In its comment, AAMA later also argues that the NPRM's estimate of 245 annual fatalities is overstated. AAMA believed those fatalities include accident conditions that do not relate to the proposed test procedures, such as single vehicle accidents, medium and heavy trucks as striking vehicles, and ejections. By excluding these, AAMA estimates there are only 52 fatalities remaining. AAMA also argued that NHTSA did not take into account the 58 to 82 fatalities that would be reduced from implementing Standard 214's quasi-static test requirement for LTVs.

The vehicle manufacturers argued these data demonstrate that LTVs are already safer than passenger cars in side impacts. Thus, these commenters concluded, it would be unreasonable to adopt more severe requirements for LTVs than what is required for passenger cars. AAMA suggested that rather than promulgate a dynamic side impact requirement for LTVs, NHTSA could utilize its resources more effectively by working to increase seat belt usage and reduce impaired driving by LTV users.

Some commenters compared LTV occupant injuries in side impacts to injuries in other types of crashes and questioned whether the side impact protection of LTVs constitutes a safety problem of a magnitude severe enough to justify the proposed rulemaking. Nissan commented that NHTSA presented data at the 1991 Enhanced Safety Vehicle Conference which indicated that the portion of fatalities for occupants in LTV side impact crashes amounted to only 0.92 percent of the total LTV occupant fatalities.

*2. Unrepresentative barrier.* Most of the commenters opposed to the NPRM objected to what they regarded as the unrepresentativeness of the proposed dynamic side impact test procedure for LTVs. Many opposed using a barrier representing an LTV to strike vehicles being tested, on the grounds that such a test would not be representative of a typical real-world LTV side impact. According to several commenters, an LTV is more likely to be struck in the side by a passenger car than by another LTV. Nissan said that data from the National Accident Sampling System (NASS) for 1988 through 1992 indicate that in side impacts, passenger vehicles collide with the side of an LTV more than three times as often as LTVs collide with other LTVs. Volkswagen (VW) and Isuzu believed that LTVs are exposed to the same traffic environment as passenger cars, and therefore, their exposure to side impact accidents from other vehicles would be similar to that of passenger cars. VW stated, ''The side impact test barrier should be representative of the accident exposure of the target vehicle and therefore a common barrier should be used for passenger cars as well as LTVs.'' AAMA said that NHTSA has not provided data justifying a departure from the ''most likely striking vehicle'' approach used in the passenger car side impact protection requirements.

The view that a dynamic side impact test for LTVs should represent a common real-world event was also shared by the Insurance Institute for Highway Safety (IIHS). This commenter supported subjecting LTVs to the same dynamic side impact test as cars. IIHS took issue with the agency's position in the NPRM that the test procedure for LTVs should be modified to better represent those crashes most likely to cause serious and fatal thorax and pelvis injuries among LTV occupants. The commenter believed NHTSA failed to indicate whether those crash conditions represent a common real-world event.

Many commenters objected that a modified LTV test procedure would not be representative of the type of crash most likely to result in serious injuries and fatalities to LTV occupants. This view is contrary to the one stated by NHTSA in the NPRM. There the agency had tentatively concluded that, in order to address the safety problem in side crashes of LTVs, the barrier used to simulate a striking vehicle should be increased in height and weight to better represent striking vehicles that are most likely to cause severe chest injuries in side impacts, i.e., standard pickups and compact pickups. (The NPRM said that accident data indicate that 78 percent of LTV side impact fatalities resulting from a ''torso'' injury involved a LTV or a heavier vehicle as the striking vehicle in vehicle-to-vehicle crashes.) Those commenters believed that passenger cars more often cause serious injuries and fatalities than LTVs as the striking vehicle. Nissan stated that NHTSA presented data[4] at the 1991 Enhanced Safety Vehicle Conference which indicated that ''serious injuries and fatalities in cases where passenger cars strike LTV class vehicles in a side impact scenario is on the order of six times that of LTV vehicles impacting another LTV.'' AAMA also refers to the report mentioned in Nissan's comment. AAMA said that the report shows that 1982–1989 NASS files indicate there were ''only 13 cases relevant to the test requirements proposed in the NPRM.'' (''Relevant'' means that these cases involved side crashes to the near side, and torso injuries only.) The commenter said that in nine of those 13 cases, a passenger car was the striking vehicle. AAMA said it conducted a similar study of 1991–1992 NASS files and found nine cases relevant to the NPRM. In 5 of the 9 cases, a passenger car was the striking vehicle. AAMA stated, ''If LTV occupants typically suffer serious thoracic injuries when struck in side impacts by vehicles other than passenger cars, then surely nine years of NASS data would not show that passenger cars are the most common

[4] Partyka, S.C., ''Light Truck Side Impacts with Serious Occupant Injury,'' ESV Report No. 91–S5–O–27.

side impact striking vehicles causing serious thoracic injuries to LTV occupants.'' AAMA also argued that a test procedure that matches the bumper height of the MDB to the H-point of the struck vehicle is likely to result in the MDB overriding the sill and floor structure. AAMA said this would be inappropriate since NASS data contained only four side impacts with sill/frame override, which accounts for only 0.03 percent of LTV side impacts.

AAMA commented that the proposed barrier configurations represented a vehicle or group of vehicles that do not exist. AAMA said that the proposed heights and weights for the barrier are inconsistent with manufacturers' fleet data. ''Ford * * * data show that the average height of Ford light truck bumpers (including vehicles up to 15,000 pounds GVWR) is only 16.6 inches from ground—only 2.1 inches higher than Ford's average passenger car bumper. The NPRM proposes to raise the MDB bumper as high as 25 inches above the ground.'' AAMA believed NHTSA should have attempted to correlate the ''typical striking vehicle'' dimensional characteristics with the average U.S. LTV fleet, as the agency did for the MDB in the passenger car side impact protection rulemaking.

*3. Inadequate test program.* Some commenters objected to the NPRM because they believed that the proposal was based on a NHTSA test program that was inadequate for reasons other than those relating to a modified MDB. AAMA argued that NHTSA simply extended the impact conditions (e.g., striking velocity of the barrier) developed for passenger cars to LTVs without showing that those conditions are relevant for LTV crashes. AAMA said that NHTSA based its conclusions about the side impact performance of the entire LTV fleet on a test program that did not represent the LTV fleet. ''None of the vehicles tested were equipped with side door beams, which could have a significant effect on test results.'' Also, AAMA said the test program did not account for the complexity and variability of LTVs as a group. For example, AAMA stated, ''(t)he agency did not test extended cab pickups which are structurally different than regular cab pickups, nor the right side of a van which is structurally different than the left side of a van.''

AAMA raised concerns about the agency's tentative conclusions in the NPRM about the effectiveness of padding and structural modifications as countermeasures. While NHTSA has shown that three inches of padding can improve the performance of vehicles in providing side impact protection, AAMA cautioned that three inches of padding is an unrealistic countermeasure for LTVs. The commenter believed that trucks with three front seating positions and three inches of interior padding would not be possible if customer seating preferences are to be met. AAMA also stated that the high compression foam used to develop effectiveness levels may reduce the SID accelerations, but may cause an increase in real-world side impact injuries, especially for elderly occupants.

## III. Agency Decision

*a. Extending the Passenger Car Requirements*

NHTSA has decided that it should limit its final action in this rulemaking to a straight extension of the passenger car requirements to LTVs. The agency views a straight extension to be a reasonable starting point for establishing side impact protection for LTVs. While the agency recognizes that a straight extension of the side impact protection requirements for passenger cars to LTVs would provide few benefits when estimated on the basis of historical accident data, it would prevent any future LTVs being introduced into the market that are inferior in side crash safety performance to passenger cars. A modified test procedure for LTVs is not being adopted at this time because of concerns that NHTSA has about the proposal in light of the public comments. These issues are discussed below.

As noted earlier, some commenters said that the agency's information regarding LTV side impact protection is limited because none of the LTVs tested by NHTSA were equipped with side door beams. Manufacturers are likely to equip all LTVs with side door beams to meet Standard 214's quasi-static requirements, which become effective beginning with MY 1995. These requirements address primarily single vehicle impacts, such as impacts with poles and trees.

NHTSA does not know what effect side door beams may have on the performance of LTVs in vehicle-to-vehicle side impacts, especially if the striking vehicle were high enough to override the door sill of the struck LTV. The beam and its supporting structures can change how crash forces are directed at or away from the vehicle occupant in a vehicle-to-vehicle crash. Accordingly, the agency is concerned that past accident data of LTVs without door beams may not accurately indicate the real-world side impact performance of LTVS with beams in vehicle-to-vehicle crashes.

Another concern relates to the feasibility of the countermeasures that could be used in LTVs to reduce the TTI(d), if a modified MDB were adopted. In the preliminary regulatory evaluation (PRE) for the NPRM, NHTSA stated that padding has been demonstrated to be an effective countermeasure for reducing TTI(d) and pelvic g's for LTVs. NHTSA's countermeasure tests evaluated padding material that was used to assess countermeasure effectiveness for passenger cars. Yet the PRE recognized that structural modifications to the vehicle might be needed in addition to padding, depending on the chosen compliance option (page VI-I). Since the fatalities and serious injuries that are occurring in LTVs are caused by the heavier and higher profile vehicles, if an MDB were used to represent these vehicles, the type of padding countermeasures developed for cars may not be sufficient, by themselves, for LTV crashes of such severity. It is further noted that in the second seat of vans, there typically is no door on the left side, and thus no structural side supports adjacent to that side of the second seat. There also appears to be limited side wall space for padding in that area. Further, the agency's cost estimates of countermeasures and modifications were based on extrapolation from passenger car data, which may or may not be valid.

Some commenters stated that the agency failed to show that the proposed test procedure duplicated the real world in terms of impact direction and speed. The agency analyzed the accident data that are available to determine accident conditions of LTV crashes. While the NPRM contained broad ranges for impact height and weight of the MDB, the agency concluded that the impact conditions based on the current data are within these ranges. Therefore, the agency rejects these comments.

By extending Standard 214's passenger car requirements to LTVs, NHTSA is ensuring that the subject future LTVs will provide side impact protection under the same crash conditions under which passenger cars provide such protection. Both passenger cars and LTVs are operated in the same environment and thus have the same exposure to striking vehicles. NHTSA is requiring that LTVs provide a minimum level of side impact protection when struck by the type of vehicle most likely to strike LTVs in all side impacts. NHTSA has determined that this approach, based on overall exposure rather than cause of fatality or serious injury, is appropriate, given the information currently available. This

rule will ensure that future LTVs offer a minimum level of side crash protection.

The agency recognizes there is widespread compliance by today's LTVs with the dynamic performance requirements when tested according to Standard 214 for passenger cars. In past regulatory proceedings involving issues on which there is widespread compliance, the agency has generally concluded that there is no compelling safety need for it to act since vehicle manufacturers are already providing the requisite safety performance in the absence of a Federal requirement. In those circumstances, NHTSA has frequently determined that rulemaking would impose a burden on the agency by requiring it to develop appropriate requirements, conduct a rulemaking proceeding, and use some of its enforcement budget to monitor compliance. Such rules would also impose certification and additional paperwork burdens on the manufacturers. Those burdens would be imposed without a commensurate safety benefit for the public, and would therefore represent unnecessary burdens.

On other occasions, however, the agency has proceeded with rulemaking to assure that there is no retreat from the existing level of safety. For example, NHTSA issued a final rule requiring installation of lap/shoulder belt systems in the rear seats of cars, although almost all models were already voluntarily slated to be so equipped within a few years of the rule.

NHTSA concludes it is similarly appropriate to extend Standard 214 to LTVs, to ensure that future LTVs subject to the standard provide protection under the same crash conditions as passenger cars. The dynamic side impact protection represented by the standard is important for occupant safety in the future, if LTVs under 6,000 pounds GVWR make up the bulk of the LTV fleet population, as is expected. The fleet populations of small (i.e., compact) vans (minivans) and utility vehicles are growing at an appreciable rate, and additional manufacturers are entering these segments of the market. In the absence of a federal standard, NHTSA cannot assure the public that the current level of protection will be continued in the future. Also, it appears that, in the future, the growth rate of small LTVs will be much higher than that of large LTVs. NHTSA estimates that the small LTVs may constitute 60 percent of the total LTV population in 1997 and beyond.

While large pickups and vans meet the injury criteria of this rule without any modifications, NHTSA believes some small and medium LTVs may not do so and others may only marginally meet the performance criteria. As the agency noted above, its test data show that the Dodge Ram D–50, with a GVWR of approximately 4,900 pounds (a medium size), met the thoracic requirement only marginally. Some LTVs smaller than the Dodge Ram D–50 may not be able to meet the requirements, and may need improvements to ensure that they meet the requirements in the standard.

As LTVs continue to grow in popularity and sales, NHTSA believes it is important to ensure that all such vehicles meet at least the minimum requirements specified in Standard 214. Moreover, NHTSA believes it is important to ensure that any new entrants to the LTV market will follow the lead of their competitors in meeting the dynamic side impact protection requirements. The agency therefore concludes that today's rule will ensure a minimum safety performance in all LTVs subject to the standard.

Also, the agency has had a longstanding policy to have equivalent safety standards for cars and LTVs. Earlier in this document, recent actions to implement this policy were noted. The agency sees no compelling reason to deviate from this policy in this instance, given the information currently available.

The agency notes that a number of commenters suggested that NHTSA terminate this rulemaking, as permitted by ISTEA. They argued that the safety problem in LTVs is minor and therefore a termination would be consistent with the provision in ISTEA permitting the agency to ''complete'' rulemaking on side impact protection for LTVs by deciding ''not to promulgate a rule.'' As discussed above, the agency disagrees that a termination is warranted. This rule ensures that all future LTVs subject to the standard offer a minimum level of side crash protection, and that occupants of cars and LTVs are assured of protection in the same crashes.

At the same time, the agency is sensitive to the issue of unnecessary regulatory burdens. As a result and because of the relatively superior safety performance of the larger LTVs and their more limited use as passenger-carrying vehicles, NHTSA is limiting the rule to LTVs with a GVWR of 6,000 pounds or less. At the time of the NPRM, the agency had reservations about proceeding with a straight extension in the absence of benefits, especially in view of the belief that a straight extension would impose ''significant compliance costs.'' These costs were estimated based on an extension of all LTVs up to 8,500 pounds GVWR. However, since this rule is limited to vehicles at or under 6,000 pounds GVWR, fewer vehicles will have to be tested. NHTSA estimates that compliance costs will be reduced by about 15 percent due to the GVWR limit, and that they will not be significant.

NHTSA notes that possible future upgrades of side impact protection for both passenger cars and LTVs will be an integral part of the agency's research and development project relating to side impact protection. This project will analyze the entire light vehicle side impact problem that will remain after all vehicles with a GVWR of 6,000 pounds or less meet the existing dynamic side impact requirements of Standard 214. The agency will be considering what performance requirement upgrades should be made to all these vehicles, based on problem analysis and appropriate physical vehicle parameters.

*b. Related Requirements*

As discussed earlier in this notice, commenters raised a number of issues relating to the NPRM's proposal to adopt a modified MDB for LTV side impact protection requirements. In addition to the issues to which the agency has responded above, issues were also raised concerning the estimated costs and benefits attributable to side impact protection requirements incorporating a modified MDB; and the effectiveness of padding as a countermeasure in tests using a modified MDB. Since the agency has decided not to adopt a modified MDB at this time, these issues are moot.

Several commenters suggested that recent NASS data indicate that the vehicle most likely to cause serious injury or death to an LTV occupant is a passenger car. Those comments were provided in opposition to a modified MDB, and are also moot.

The remaining issues raised by the commenters are discussed in the next section.

1. Vehicles Covered by This Rule

This rule applies to LTVs with a GVWR of 6,000 pounds or less. However, it does not apply to any LTVs in that weight range that are walk-in vans, motor homes, tow trucks, dump trucks, ambulances and other emergency rescue/medical vehicles (including vehicles with fire-fighting equipment), and vehicles equipped with wheelchair lifts.

The 6,000 pound GVWR limit differs from that mentioned in ISTEA. As

indicated above, ISTEA required the agency to address the possible extension of Standard No. 214's dynamic side impact requirements for passenger cars to LTVs with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. Having chosen the barrier currently specified for passenger cars, the agency believes that it is appropriate to limit the application of the rule to vehicles with a GVWR of 6,000 pounds or less. That barrier represents side crashes in which occupants of the heavier LTVs are relatively unlikely to suffer death or serious injury. Further, LTVs with GVWRs over 6,000 pounds should easily meet the dynamic requirements adopted today without any modification. NHTSA conducted several side impact tests of production LTVs. Analysis of these data show that the performance of the vehicles in producing TTI(d) values has an inverse relationship to the curb weight of the test vehicle. Vehicles with a curb weight of over 3,800 pounds produced TTI(d) values below 50 g's. Since curb weight of 4,000 pounds is approximately equivalent to a GVWR of about 6,000 pounds, NHTSA concluded that vehicles with a GVWR of more than 6,000 pounds would meet the TTI(d) performance requirement of 85 g's with a large margin of safety (i.e., at least 30 to 35 g's below the specified performance requirement). In the interest of reducing unnecessary regulatory burdens associated with certifying vehicles to the FMVSSs, NHTSA has not applied this rule to large (over 6,000 pounds GVWR) LTVs.

*Vehicles manufactured in more than one stage; altered vehicles.* Limiting the application of this rule to LTVs with a GVWR of 6,000 pounds or less excludes a substantial number of vehicles produced by businesses involved in manufacturing vehicles in more than one stage, and in converting, or altering, LTVs (e.g., van converters). Many of these are small businesses. Final-stage manufacturers typically install truck bodies and/or work-related equipment on chassis. Alterers modify the structure of new, completed vehicles. Under NHTSA's regulations, a final-stage manufacturer must certify that the completed vehicle conforms to all applicable safety standards, and alterers must certify that the altered vehicle continues to comply with all applicable safety standards.

The GVWR limit of 6,000 pounds or less is the same one that is used in Standard 216, ''Roof Crush Resistance'' (49 CFR section 571.216). Standard 216 prescribes static roof strength requirements for LTVs to increase the resistance of the roof to crush and intrusion. The standard originally applied to passenger cars, and was extended to LTVs in a 1991 final rule. In a comment on the rule, NTEA indicated that commercial LTVs produced from incomplete chassis generally have a GVWR above 6,000 pounds. Due to the agency's need to further examine the feasibility of applying the standard to LTVs with higher GVWRs, NHTSA limited the standard to LTVs with a GVWR of 6,000 pounds or less.

NHTSA is not aware that a significant number of vehicles produced by final-stage manufacturers and alterers have GVWRs below 6,000 pounds. No commenter provided information showing the existence or estimate of the population of multistage manufacturers or alterers of vehicles in that weight class. To the extent they exist, the means that these final-stage manufacturers and alterers will use in certifying compliance with the dynamic side impact requirements of Standard 214 will not differ significantly from the means they already use to certify compliance with other requirements, such as Standard 214's quasi-static side door strength requirements and Standard 208's automatic crash protection requirements. Those means are briefly described below.

First, a final-stage manufacturer could complete the vehicle within the limits set by the incomplete vehicle manufacturer for assuring continued compliance. This is the simplest course of action that a final-stage manufacturer can take to ensure that its completed vehicle performs safely. NHTSA's certification regulations require manufacturers of incomplete vehicles (chassis) used by final-stage manufacturers to provide information regarding the limitations on the center of gravity, weight, and other attributes that must be observed by a final-stage manufacturer in completing a vehicle if that manufacturer is to avoid affecting the vehicle's compliance with applicable safety standards. When the final-stage manufacturer observes the limits set by the incomplete vehicle manufacturer, it may certify the vehicle on that basis. An alterer could modify a certified vehicle in a way that does not affect the vehicle's compliance with FMVSS 214, such as by refraining from weakening the side structure of the vehicles.

Second, a final-stage manufacturer could choose not to remain within the incomplete vehicle manufacturer's limits for a chassis, or an alterer could affect a vehicle's compliance with the FMVSSs, if the final-stage manufacturer or alterer took steps sufficient to enable it to certify, with due care, that the completed vehicle complied with applicable safety standards, including Standard 214. Final-stage manufacturers that build their own body structures are generally larger than most final-stage manufacturers, and have greater engineering and testing expertise. Also, final-stage manufacturers can band together to sponsor testing and/or engineering analysis. Similarly, an alterer could conduct or sponsor testing and/or engineering analyses showing that the vehicle, as altered, complies with Standard 214.

Issues relating to LTVs produced in more than one stage or altered were commented on by five parties involved in the multistage manufacture or conversion of LTVs. They included the National Truck Equipment Association (NTEA), the Recreation Vehicle Industry Association (RVIA), two seat suppliers to multistage manufacturers and alterers (Flexsteel Industries and Bornemann Products), and an alterer of completed LTVs (Starcraft Automotive Corporation.)

These commenters expressed reservations concerning the first approach discussed in the NPRM, i.e., that a final-stage manufacturer could stay within the limits set by the incomplete vehicle manufacturer, and that an alterer could alter the vehicle in conformity with the manufacturer's body builder's guide so as not to disturb the vehicle's compliance with Standard 214. NTEA, representing multistage manufacturers and distributors of work-related trucks, truck bodies and equipment, said that, as a result of a dynamic side impact requirement for LTVs, incomplete vehicle manufacturers might restrict final-stage manufacturers from making any modification to the side door structure of their vehicles. The commenter believed such a restriction would preclude final-stage manufacturers from widening or lengthening doors, and would thus preclude them from producing vehicles that need large doors for accessibility purposes, such as ambulances, vehicles for handicapped persons, or specialty delivery vehicles.

NHTSA has previously considered assertions that incomplete vehicle manufacturers would establish unreasonably stringent limitations on their vehicles. In the rules establishing dynamic testing requirements for manual safety belts in LTVs under Standard 208 (53 FR 50221; December 14, 1988) and extending Standard 204's steering column rearward displacement limitations to additional LTVs (54 FR 24344; June 7, 1989), NHTSA noted that

it did not believe that any incomplete vehicle manufacturer would, as a practical matter, establish unreasonably stringent limitations for its incomplete vehicles. If any incomplete vehicle manufacturer were to do so, final stage manufacturers would purchase their incomplete vehicles from other manufacturers that had established more realistic limitations.

The agency's belief that market forces will prevent incomplete vehicle manufacturers from establishing unreasonably stringent limitations seems to have been correct. No manufacturer has provided NHTSA with any evidence that overly stringent limitations have been or will be imposed on incomplete vehicles subject to any of the existing crash testing requirements. Thus, NHTSA does not find persuasive NTEA's suggestion that unreasonably stringent limitations will be imposed on the completion of incomplete vehicles as a result of extending Standard 214's dynamic test requirements to LTVs.

In any event, NHTSA believes the 6,000 pound GVWR threshold for this rule excludes most, if not all, LTVs produced by final-stage manufacturers and thus alleviates many of NTEA's concerns about the impacts of this rule. Moreover, this rule addresses some of NTEA's concerns by excluding walk-in vans, motor homes, tow trucks, dump trucks, ambulances and other emergency rescue/medical vehicles (including vehicles with fire-fighting equipment), and vehicles equipped with wheelchair lifts. These categories of vehicles are excluded because many vehicles within these categories tend to have unusual side structures that are not suitable for MDB testing (for example, since some of these excluded vehicles have a body much wider than their cabs, the MDB cannot hit the driver's door without first striking the body. The rule differs from the NPRM in adding ''other emergency rescue/medical vehicles'' and vehicles equipped with a wheelchair lift, to the list of excluded vehicles. Emergency rescue/medical vehicles typically have unusual side structures and are thus excluded for the same reason that the other vehicles are excluded. Vehicles equipped with a wheelchair lift are excluded because such vehicles typically have features such as a lowered floor (some are lowered as much as 10 inches), raised roof, movable seat bases and/or specially designed removable seats, in addition to the lift itself, that could raise practicability problems with regard to the ability of the vehicle to meet the dynamic side impact requirements. While NHTSA believes that all individuals are entitled to an equivalent level of occupant crash protection, the agency also believes that the goal of providing equivalent crash protection should not be achieved at the expense of the goal of providing mobility to the physically challenged. This rule excludes vehicles equipped with wheelchair lifts because those vehicles have unique features which, while improving accessibility, make it difficult for the vehicle to meet these requirements. Without the exclusion, these vehicles might not be produced.

As to LTVs that have not been excluded, if a final-stage manufacturer or alterer does not stay within the incomplete vehicle manufacturer's limits or alters the vehicle in a way that could affect its conformance to side impact protection requirements, the manufacturer or alterer will have the responsibility of determining what must be done to certify that the vehicle provides the requisite safety performance. Those manufacturers already certify to the dynamic crash test requirements of Standards 208 (''Occupant Crash Protection''), 212 (''Windshield Mounting''), 219 (''Windshield Zone Intrusion'') and 301 (''Fuel System Integrity''), and the quasi-static requirements of Standard 214 and 216, among others. Under the statute, each manufacturer must certify its vehicles, but the statute does not require any manufacturer to crash test or undertake any particular evaluation of its vehicles to make its certification. If crash testing its vehicles is too burdensome for a final-stage manufacturer, it could certify its vehicles using similar means to those it now uses to certify to other standards with dynamic testing requirements, including appropriate engineering analyses.

The NPRM stated that, if a final-stage manufacturer does not stay within the incomplete vehicle manufacturer's limits or if an alterer alters the vehicle in a way that could affect the LTV's conformance to side impact protection requirements, the final-stage manufacturer or alterer can band together with other manufacturers and alterers to sponsor testing and/or engineering analysis to show that a vehicle type common to all complies with the dynamic side impact requirements. This is similar to what is done to enable multistage manufacturers and alterers to certify to the dynamic testing requirements of FMVSS 208, ''Occupant Crash Protection.'' In response, RVIA said that while most manufacturers engaged in vehicle conversions certify to the automatic crash protection requirements of Standard 208 by means of ''engineering analysis,'' using data from seating component suppliers and incomplete vehicle manufacturers, RVIA argued that engineering analysis would not be an alternative to full scale crash testing in the case of Standard 214. RVIA stated this is because

> [a]dequate simulation of dummy accelerations resulting from side intrusion contact with interior components, padding and/or seating components cannot be performed. Full scale impact testing would therefore be required to be performed on each side of each different vehicle/seating system configuration.

Similarly, Flexsteel Industries said that

> * * * the dynamic side impact requirements of FMVSS 214 on vans and pickups could well create a larger problem to verify continued vehicle compliance than that experienced for FMVSS 208. Unlike the FMVSS 208 requirement where sled testing could be used to make comparative tests of Flexsteel seating to factory seating, the proposed side impact test is an intrusive test and both sides of new vans and pickups may have to be tested.

NHTSA does not agree that engineering analysis is not useful in assessing a vehicle's compliance with Standard 214. Manufacturers have computer simulations, component and sled tests using body shells, and analyses at their disposal to aid in assessing the capability of a vehicle to meet the requirements under Standard 214. These methods are considerably less expensive than crash testing. With respect to the opportunity to use these alternative methods for assessing compliance, Standard 214 is not any different from Standard 208. Sled tests simulating side crash tests can be performed in the same manner as in FMVSS 208. Similarly, component test data from crushing vehicle doors, seat structures, and other lateral components along with dummy body block data could be used in developing mathematical models and computer simulations to analyze safety performance of vehicle designs. This would enable RVIA, Flexsteel and other companies to determine the capability of their vehicle designs in meeting the requirements in FMVSS 214. Further, NHTSA believes that alterers should assure that they are producing vehicles that are equal to their original counterparts. Therefore, alterers must certify their vehicles to the requirements in FMVSS 214 by any available means.

**Other Issues**

*Vehicles with work-performing equipment.* NTEA suggested that NHTSA should exclude vehicles outfitted with a cargo or property carrying body, or work performing

equipment. The agency is not adopting this suggestion because the agency believes references to ''cargo or property carrying body'' are overly broad. For instance, they would exclude, inappropriately, pickup trucks. NHTSA further notes that most, if not all, multistage vehicles equipped with work performing equipment are excluded as a result of either the 6,000 pound weight threshold for the applicability of the rule, or the exclusion of vehicles such as dump trucks, tow trucks and emergency response/medical vehicles from the rule's coverage.

RVIA, NTEA and Starcraft Automotive urged NHTSA to exclude ''second stage manufacturers'' of LTVs from any dynamic side impact protection requirement. In NHTSA's view, the statute does not permit such an exclusion. While the agency must ''consider whether any * * * proposed standard is reasonable, practicable and appropriate for the particular type of motor vehicle or motor vehicle equipment for which it is prescribed,'' (49 U.S.C. § 30111(b)(3), formerly section 103(f)(3) of the Vehicle Safety Act), the agency's authority to establish different standards for different classes of vehicles is not without limit. The legislative history of the Vehicle Safety Act reveals that the consequence of section 30111(b)(3) is that any differences between standards for different classes of vehicles ''of course [are to] be based on the type of vehicle rather than its place of origin *or any special circumstances of its manufacturer.*'' S. Rept. 1301, 2 U.S. Code, Cong. & Admin. News, 2714 (1966), cited in *Chrysler Corp.* v. *Dept. of Transportation,* 472 F.2d 659, 679 (6th Cir. 1972). Under that decision, NHTSA may not exclude vehicles from Standard 214 simply because they are manufactured in two or more stages. Further, NHTSA is not authorized when establishing safety standards to differentiate between manufacturers on the basis of their size or financial resources.

Strong policy reasons underlie Congress' refusal to differentiate between vehicles on the basis of the manufacturers' ''special circumstances.'' A motor vehicle is an inherently dangerous instrument, composed of multiple components that must function together smoothly and safely. To protect unsuspecting members of the public from exposure to unreasonable risks posed by unsafe vehicles, there is good reason to require that every vehicle of a given type to meet all ''minimum performance standards'' that are prescribed for vehicles of its type.

Moreover, the statute does not authorize NHTSA to grant permanent exemptions from safety standards to small manufacturers who otherwise would be covered by those standards. *See Nader* v. *Volpe,* 475 F.2d 916, 918 (D.C. Cir. 1973). While *Nader* involved a single manufacturer that sought to be permanently exempted from safety standards, its reasoning applies equally to classes of manufacturers that seek such exemptions. Although the Safety Act was amended after the *Nader* decision to permit small manufacturers to seek *temporary* exemptions from safety standards if they can demonstrate that compliance with the standard would cause them ''substantial economic hardship'' and that they have made a good faith effort to comply (49 U.S.C. § 30113, formerly section 123 of the Vehicle Safety Act), Congress has severely restricted the agency's authority to grant such exemptions to very narrow, limited circumstances. These commenters are in effect seeking a permanent exemption from Standard 214 that the statute does not permit.

NHTSA acknowledges that *National Truck Equipment Association* v. *NHTSA,* 919 F.2d 1148 (6th Cir. 1990), suggests that NHTSA has authority, somewhere within its enabling statute, to exclude commercial vehicles manufactured in two or more stages from coverage under a safety standard. However, even an expansive reading of that case would not justify an exclusion of all multistage vehicles from the coverage of the standard.

*Compliance using engineering analysis.* Bornemann Products asked NHTSA to consider issuing a rule specifying that NHTSA will determine whether an LTV complies with a dynamic side impact requirement based on means other than an actual dynamic test, such as by way of engineering analysis. As a matter of policy, NHTSA seeks in developing and implementing its safety standards to use test procedures that not only determine compliance but also are as predictive of safety performance in the real world as practicable. Since dynamic crash tests are more predictive of such performance than engineering analysis, the agency uses them where practicable in developing compliance test procedures.

While engineering analysis may be adequate for design of the average vehicle, it may not be sufficient for the agency's purposes to determine the safety performance of a vehicle, with respect to all vehicle models. For example, in a particular case, the analysis may not properly account for all of the relevant crash variables and the individual interrelationship that exists between those variables. However, NHTSA acknowledges that manufacturers may use analytical methods to establish due care, especially if the manufacturers have limited financial resources.

2. Vehicles Manufactured Without Doors

In addition to the excluded vehicles described in the preceding section, this rule also excludes vehicles that have no doors or exclusively have doors that are designed to be easily attached or removed so that the vehicle can be operated without doors. The proposed exclusion was based on practicability concerns. Advocates objected to the proposed exclusion on the basis that it allows the design and sale of vehicles with an ''inherently dangerous design.''

In response, the agency notes that requiring these vehicles to meet Standard 214 would necessitate changes in their design which would adversely affect the utility and original purpose for which these vehicles were introduced. Accordingly, the agency does not consider the standard reasonable, practicable and appropriate for these vehicles.

3. Impact Reference Line

This rule makes a slight change to the provision in the NPRM on specifying the impact reference line (IRL) (S6.11) for the moving deformable barrier. The IRL is located on the target test vehicle to determine where the MDB must first contact the target vehicle in the dynamic test. It determines the distance of the vertical line of first MDB contact from the center of the wheelbase of the struck vehicle, and provides the relative position of the test dummy in the front seat of the target vehicle with respect to the striking MDB at the time of impact. For a left side impact, the left forward edge (corner) of the MDB must be aligned so that, when the MDB strikes the test vehicle, a longitudinal plane tangent to the left forward edge of the MDB passes through the IRL within a tolerance of ± 2 inches. As explained in the NPRM, the specified impact reference line for passenger cars is generally 37 inches forward of the center line of the wheelbase of the struck vehicle. However, for cars with wheelbases greater than 114 inches, the impact reference line is 20 inches behind the center line of the front axle. This ensures that the impact point for cars with very long wheelbases is not so far toward the rear of the car that the front seat dummy does not experience a full impact. The agency proposed, with one exception, the same impact reference line for LTVs. To ensure that

the impact line is not too far forward for LTVs with very short wheelbases, the agency proposed that for LTVs with wheelbases of 98 inches or less, the impact reference line would be 12 inches rearward of the vehicle's front axle centerline. This would ensure that the MDB would not likely bridge across the front and rear axles in short wheelbase LTVs.

The NPRM noted that GM expressed a concern that specification of impact point based on wheelbase could result in different test results for different wheelbase versions of the same model LTV. Manufacturers sometimes offer the same LTV with several different wheelbases. Basing the impact point on a vehicle's wheelbase would result in the point of first contact of the barrier, in two structurally identical LTV's, being at two different locations. The NPRM requested comments on whether the specified impact reference line should be adjusted to eliminate this possibility, such as by specifying the impact reference line based on driver H-point instead of wheelbase.

In commenting on the NPRM, GM iterated its concern that the same model vehicle would be tested under two different sets of test conditions. GM said its regular cab S/T pickup with a standard length bed has a wheelbase of 108.3 inches, while the S/T pickup with a regular cab and long bed has a wheelbase of over 114 inches. The commenter stated, ''According to the proposed procedure, the MDB would strike these two versions of the same truck at locations which differ by nearly three inches.'' Rover said the vehicle manufacturer should be able to choose to impact all ''structurally identical LTVs with different wheelbases'' at the same point provided that ''the point chosen was that specified in the standard for one of the range of wheelbases.''

After reviewing these comments, NHTSA has decided to specify the impact reference line in the following manner. For vehicles with a wheelbase of 98 inches or less, or greater than 114 inches, the impact reference line will generally be placed at the locations proposed in the NPRM. That is, for LTVs with a wheelbase of 98 inches or less, the impact reference line is 12 inches behind the vehicle's front axle, to ensure that the MDB is not so forward as to impact the front wheel, or bridge between the front and rear axles in a very short wheelbase vehicle. (NHTSA has adopted this provision for LTVs with wheelbases of 98 inches or less, and not for passenger cars, because to the agency's knowledge, there are very few passenger cars with such short wheelbases compared to LTVs sold in this country.) Similar to the specification in the standard for locating the impact reference line for passenger cars, for LTVs with wheelbases greater than 114 inches, the impact reference line generally is 20 inches behind the vehicle's front axle center line, to ensure that the impact point for vehicles with very long wheelbases is not so far to the rear of the vehicle that the front seat dummy does not experience a full impact.

For vehicles with a wheelbase of greater than 98 inches but not greater than 114 inches, the impact reference line will generally be 37 inches forward of the center of the vehicle's wheelbase, similar to the specification for passenger cars. However, in response to GM's and Rover's comments, this rule provides manufacturers producing two or more different versions of the same model vehicle the option of determining the impact reference line based on the vehicle with the shortest wheelbase of the different versions of the model.

NHTSA has selected this optional procedure because it reduces test burdens on manufacturers producing compact and ''stretch'' versions of a vehicle model, without compromising safety. The procedure does not alter the relative longitudinal position between the dummy and the MDB, thus ensuring that the dummy will be loaded by the barrier in the same manner in a test. While wheelbases for different versions of the same LTV model could differ, the difference in length is generally in the rear part of the vehicle, with the front axle to the front seating reference point (SgRP) distance remaining essentially the same. That is, the ''stretching'' resulting in a longer wheelbase version of a vehicle is rearward of the front seat. Thus, the relative distance between the front axle and the dummy is constant in different versions of the same LTV model irrespective of their differences in the location of the center of their wheelbase. Since the SgRP is located in virtually the same position in all versions of a specific vehicle model, the different versions are likely to perform virtually identically in Standard 214's dynamic test, if the distance between the barrier impact reference line and the dummy is maintained in the different versions. That knowledge would be helpful to manufacturers in certifying different versions of a model.

The procedure bases the IRL to SgRP distance on the vehicle with the shortest wheelbase, as opposed to a longer wheelbase, because using the shortest wheelbase ensures that the engagement of the side structure with the barrier is consistent across all versions of the same model. If a vehicle with a longer wheelbase were used as the ''base'' vehicle, the procedure could result in the barrier hitting a tire on a vehicle with a very short wheelbase, which would interfere with the interaction of the MDB and the side structure of the vehicle tested.

Under the optional procedure, the distance between the IRL that is a certain distance forward of the center of the vehicle's wheelbase (i.e., the vehicle with the shortest wheelbase, if there are several versions of the same model) or rearward of the front axle, as the case may be, and the SgRP of the vehicle, is used to determine the impact reference line for all other versions of the same model vehicle, even those with a wheelbase over 114 inches when it is a stretch version of a specific model. The distance between the SgRP and the IRL on the vehicle with the shortest wheelbase will be the same for all other versions of the same model.

Stated differently, NHTSA will place the IRL on a test vehicle of a specific model at the same distance from the SgRP that the IRL is from the SgRP on the model with the shortest wheelbase. When several versions of the same model have wheelbases ranging from 98 inches or less to more than 98 inches, the IRL will be placed 12 inches behind the centerline of the front axle of the vehicle with the shortest wheelbase. When the shortest version of a model has a wheelbase greater than 98 inches but not greater than 114 inches, the IRL will be placed 37 inches forward of the center of the vehicle's wheelbase (i.e., the vehicle with the shortest wheelbase, if there are several versions of the same model). When the shortest version of a model has a wheelbase greater than 114 inches, the IRL will be placed 20 inches rearward of the shortest vehicle's front axle. In all cases, after the location of the IRL is determined, the longitudinal distance from this reference line to the front SgRP is also determined. For tests of all other versions of the LTV model being tested, the IRL is located such that the distance between the IRL and the SgRP will be maintained.

4. Rear Seat

The NPRM requested comments on whether an LTV side impact protection requirement should apply to the front and rear seats of LTVs (as is the case for passenger cars), or whether they should apply to the front seats only of these vehicles. The preliminary economic assessment for the NPRM estimated that, for the rear seat, the target population consisted of eight fatalities and 17 to 20 AIS 3+ injuries. Because of the projected growth in LTV

registrations, the agency has now estimated that the target population for the rear seats may increase to 20–26 fatalities and 40–55 serious injuries, in the long run. The National Association of Independent Insurers (NAII) supported applying a dynamic side impact requirement to ''back doors'' as a means of increasing the safety to children riding in the passenger areas of mini-vans and sport-utility vehicles. The commenter said it is surprised by the ''unexpectedly low safety payoff'' estimated by NHTSA. Advocates acknowledged that the agency's estimates raise the possibility that applying a dynamic requirement to rear seats could create an unnecessary cost burden for manufacturers. However, the commenter argued that NHTSA could have underestimated how many small LTVs are used as passenger carrying vehicles.

This rule applies the dynamic side impact requirements to both the front and rear seats of LTVs. The agency believes this is reasonable, since it will make the requirements for passenger cars and LTVs as similar as possible. Also, a rear seat requirement will not impose significant burdens on manufacturers, since currently all LTVs would probably meet the requirement with little or no change. Most importantly, NHTSA adopted the rear seat requirement because trends in LTV registrations and occupancy data indicate that rear seats on LTVs are likely to be occupied more in the future, compared to the past twenty years. As more and more LTVs are used for family transportation, children are increasingly transported in these seats. In fact, comparing 1981–1986 NASS data for towaway crashes to 1988–1993 data, the ratio of rear to front seating of minors in LTVs has doubled from 0.2 to 0.4, while only slightly increasing from 0.5 to 0.6 for passenger cars.

5. Upgrading Other Aspects of the Standard

NHTSA received two comments suggesting that the agency should consider upgrading aspects of Standard 214 aside from modifications to the MDB. Advocates supported modifying the MDB to increase its height and weight, but also urged NHTSA to lower allowable TTI(d) to 80 (from 85) and pelvic g to 90 (from 130).

This rule does not adopt lower limits on the TTI(d) and pelvic g performance criteria specified in Standard 214. The agency gave no suggestion in the NPRM that NHTSA would change the performance criteria, and thus there was no notice for the suggested amendments.

IIHS, while supporting extending the passenger car requirements to LTVs (this commenter was opposed to a modified MDB for LTVs), urged NHTSA to ''seriously review ways to upgrade this standard for all passenger vehicles.'' The commenter was concerned that the rulemaking signaled that NHTSA is satisfied with the passenger car requirements of Standard 214, and that the research needed to upgrade the standard does not have a sufficient priority within the agency.

NHTSA believes it would be premature to decide to upgrade the passenger car side impact protection requirements before an evaluation is made of the effectiveness of those requirements. Further, since the standard will not be fully implemented until September 1, 1996, it is too early to reassess the efficacy of those requirements. It is common practice for the agency to conduct an evaluation study of an important rulemaking action, such as Standard 214's dynamic side impact protection requirements, when sufficient accident data become available for analysis. NHTSA believes sufficient data will be available for an effective evaluation of the passenger car dynamic side impact requirements by the year 2000. NHTSA has planned to undertake research on advance dynamic side impact protection for all light passenger vehicles, including LTVs. The agency has also research underway to determine the potential for additional injury criteria for chest and abdominal injuries in side crashes. That research, while more of a priority at this time than efforts to upgrade the passenger car side impact protection requirements, is nevertheless likely to yield important information on matters pertaining to a Standard 214 upgrade for all regulated vehicles.

6. Leadtime

This rule is effective for all vehicles on September 1, 1998. NHTSA believes that most, if not all, LTVs subject to the rule are able to meet the requirements adopted today with little or no modification. Thus, a phase-in schedule for vehicle compliance with the rule is unnecessary. On the other hand, some manufacturers of small LTVs may seek to modify their vehicles to increase the margin with which their vehicles meet the criteria of the standard, to ensure the TTI measurements that NHTSA obtains from tests of their vehicles are within the standard's limits. NHTSA has determined that a September 1, 1998 effective date gives motor vehicle manufacturers sufficient leadtime to evaluate their products and make any necessary changes to them. In addition, there may be a number of final-stage manufacturers, many of which are small businesses, that need a September 1, 1998 effective date to obtain information sufficient to allow them to certify to the requirements of the standard. Final-stage manufacturers may not be able to initiate their compliance work until the chassis manufacturers publish their guidelines for completing vehicles in compliance with the dynamic performance requirements of Standard 214 and make those available. In view of the possible impacts of this amendment on both large and small manufacturers, NHTSA concludes for good cause shown, it is in the public interest to have an effective date later than one year after promulgation of this rule.

## IV. Rulemaking Analyses and Notices

*a. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' The agency has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures, and has determined that it is not ''significant'' under them. This rule will ensure that future new LTV models provide at least the same level of benefits as are provided to passenger car occupants. The safety benefits accruing from this rule, as applied to current models, are likely to be small. As far as the agency knows, all current LTVs meet this final rule. However, it appears some current models would only marginally meet the standard as currently manufactured, and may therefore have to be improved to assure compliance in future testing. The costs of this rule are negligible. In the preliminary regulatory evaluation for the NPRM, NHTSA estimated total compliance costs of $1.5 million (1992 dollars), with the standard applicable to vehicles at or below 8,500 pounds GVWR (55 vehicles at $27,770 per test, excluding the cost of the test vehicles). With the final rule applicable to vehicles at or below 6,000 pounds GVWR, potentially 47 vehicles would be subject to testing, with a total cost of $1.3 million.

*b. Regulatory Flexibility Act*

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. The small businesses and organizations most

likely to be affected by this rule are final-stage LTV manufacturers and alterers. Many of the vehicles produced by final-stage manufacturers are over 6,000 pounds GVWR. Because the rule applies only to vehicles at or below 6,000 pounds GVWR, this significantly reduces the applicability of the rule in terms of both the number of small businesses affected by the rule, and the number of vehicles produced by an affected manufacturer. Some van converters (which are ''alterers'') could be affected by the rule. While there are a significant number of van converters, there are probably only a small number that convert mini-vans or other vans at or under 6,000 pounds GVWR, that produce vehicles types that are subject to this rule and that also change the side structure of the vehicle (e.g., by putting a larger window in the side of the vehicle). The van converter that does so would need to certify that the altered vehicle complies with Standard 214. Van converters would be able to make their certification using means at their disposal, such as engineering analyses or sponsored testing, similar to the methods they now use to certify to dynamic and quasi-static test requirements in the FMVSSs that apply to their vehicles. (A detailed discussion of the means available to final-stage manufacturers and alterers in certifying to the dynamic test requirements adopted today are discussed in the section, ''Vehicles covered by this rule,'' *supra*.) In view of the limitations on the applicability of this rule, and in view of the means available to manufacturers to certify their vehicles, this rule will not result in a significant economic impact on a substantial number of small entities.

*c. Executive Order 12612 (Federalism)*

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*d. National Environmental Policy Act*

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

*e. Executive Order 12778 (Civil Justice Reform)*

This rule does not have any retroactive effect. Under section 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.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA amends 49 CFR Part 571 as set forth below.

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.214 is amended by revising S1(b) and S2, adding S3(f), and revising S5.1, S6.1, S6.11 and S7, and by adding S6.11.1 and S6.11.2 to read as follows:

**§ 571.214 Standard No. 214, Side Impact Protection.**

* * * * *

S1. * * *

(b) *Purpose.* The purpose of this standard is to reduce the risk of serious and fatal injury to occupants of passenger cars, multipurpose passenger vehicles, trucks and buses in side impact crashes by specifying vehicle crashworthiness requirements in terms of accelerations measured on anthropomorphic dummies in test crashes, by specifying strength requirements for side doors, and by other means.

S2. This standard applies to—

(a) Passenger cars;

(b) Effective September 1, 1993, sections S3(a), S3(e), S3.1 through S3.2.3, and S4 of the standard apply to multipurpose passenger vehicles, trucks, and buses with a GVWR of 10,000 pounds or less, except for walk-in vans; and

(c) effective September 1, 1998, sections S3(f) and S5 of the standard apply to multipurpose passenger vehicles, trucks and buses with a GVWR of 6,000 pounds or less, except for walk-in vans, motor homes, tow trucks, dump trucks, ambulances and other emergency rescue/medical vehicles (including vehicles with fire-fighting equipment), vehicles equipped with wheelchair lifts, and vehicles which have no doors or exclusively have doors that are designed to be easily attached or removed so the vehicle can be operated without doors.

* * * * *

S3 * * *

(f) When tested according to the conditions of S6, each multipurpose passenger vehicle, truck and bus manufactured on or after September 1, 1998, shall meet the requirements of S5.1, S5.2, and S5.3 in a 33.5 miles per hour impact in which the vehicle is struck on either side by a moving deformable barrier. A part 572, subpart F test dummy is placed in the front outboard seating position on the struck side of the vehicle, and if the vehicle is equipped with rear seats, then another part 572, subpart F test dummy is placed on the outboard seating position of the second seat on the struck side of the vehicle. However, the second seat requirements do not apply to side-facing seats or to vehicles that have second seating areas that are so small that the part 572, Subpart F dummy can not be accommodated according to the positioning procedure specified in S7.

* * * * *

S5.1 *Thorax.* The Thoracic Trauma Index (TTI(d)) shall not exceed:

(a) 85 g for a passenger car with four side doors, and for any multipurpose passenger vehicle, truck, or bus; and,

(b) 90 g for a passenger car with two side doors, when calculated in accordance with the following formula:

$TTI(d) = 1/2\ (G_R + G_{LS})$

The term ''$G_R$'' is the greater of the peak accelerations of either the upper or lower rib, expressed in g's and the term ''$G_{LS}$'' is the lower spine (T12) peak acceleration, expressed in g's. The peak acceleration values are obtained in accordance with the procedure specified in S6.13.5.

* * * * *

S6.1 *Test weight.* Each vehicle is loaded to its unloaded vehicle weight, plus 300 pounds or its rated cargo and luggage capacity (whichever is less), secured in the luggage or load-carrying area, plus the weight of the necessary anthropomorphic test dummies. Any added test equipment is located away from impact areas in secure places in the vehicle. The vehicle's fuel system is filled in accordance with the following procedure. With the test vehicle on a level surface, pump the fuel from the

vehicle's fuel tank and then operate the engine until it stops. Then, add Stoddard solvent to the test vehicle's fuel tank in an amount which is equal to not less than 92 percent and not more than 94 percent of the fuel tank's usable capacity stated by the vehicle's manufacturer. In addition, add the amount of Stoddard solvent needed to fill the entire fuel system from the fuel tank through the engine's induction system.

* * * * *

S6.11 *Impact reference line.* Place a vertical reference line at the location described below on the side of the vehicle that will be struck by the moving deformable barrier:

S6.11.1 *Passenger cars.*

(a) For vehicles with a wheelbase of 114 inches or less, 37 inches forward of the center of the vehicle's wheelbase.

(b) For vehicles with a wheelbase greater than 114 inches, 20 inches rearward of the centerline of the vehicle's front axle.

S6.11.2 *Multipurpose passenger vehicles, trucks and buses.*

(a) For vehicles with a wheelbase of 98 inches or less, 12 inches rearward of the centerline of the vehicle's front axle, except as otherwise specified in paragraph (d) of this section.

(b) For vehicles with a wheelbase of greater than 98 inches but not greater than 114 inches, 37 inches forward of the center of the vehicle's wheelbase, except as otherwise specified in paragraph (d) of this section.

(c) For vehicles with a wheelbase greater than 114 inches, 20 inches rearward of the centerline of the vehicle's front axle, except as otherwise specified in paragraph (d) of this section.

(d) At the manufacturer's option, for different wheelbase versions of the same model vehicle, the impact reference line may be located by the following:

(1) Select the shortest wheelbase vehicle of the different wheelbase versions of the same model and locate on it the impact reference line at the location described in (a), (b) or (c) of this section, as appropriate;

(2) Measure the distance between the seating reference point (SgRP) and the impact reference line;

(3) Maintain the same distance between the SgRP and the impact reference line for the version being tested as that between the SgRP and the impact reference line for the shortest wheelbase version of the model.

(e) For the compliance test, the impact reference line will be located using the procedure used by the manufacturer as the basis for its certification of compliance with the requirements of this standard. If the manufacturer did not use any of the procedures in this section, or does not specify a procedure when asked by the agency, the agency may locate the impact reference line using either procedure.

* * * * *

S7. *Positioning procedure for the Part 572 Subpart F Test Dummy.* Position a correctly configured test dummy, conforming to subpart F of part 572 of this chapter, in the front outboard seating position on the side of the test vehicle to be struck by the moving deformable barrier and, if the vehicle has a second seat, position another conforming test dummy in the second seat outboard position on the same side of the vehicle, as specified in S7.1 through S7.4. Each test dummy is restrained using all available belt systems in all seating positions where such belt restraints are provided. In addition, any folding armrest is retracted.

* * * * *

Issued on: July 20, 1995.

**Ricardo Martinez,**

*Administrator.*

[FR Doc. 95–18275 Filed 7–27–95; 8:45 am]

BILLING CODE 4910–59–P

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## 49 CFR Part 571

**[Docket No. 85–07; Notice 10]**

**RIN 2127–AF23**

## Federal Motor Vehicle Safety Standards; Air Brake Systems Control Line Pressure Balance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** In response to a petition for rulemaking submitted by Sealco Air Controls, this document amends the control line pressure differential requirements in Standard No. 121, *Air Brake Systems*, for converter dollies and trailers designed to tow other air braked vehicles. The agency has concluded that the amendments will improve the braking compatibility of such vehicles by allowing the use of a relay valve known as a spool-type low opening valve.

**DATES:** *Effective date.* The amendments in this document become effective August 28, 1995.

*Petitions for reconsideration.* Any petitions for reconsideration of this rule must be received by NHTSA no later than August 28, 1995.

**ADDRESSES:** Petitions for reconsideration of this rule should refer to Docket No. 85–07; Notice 10 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–366–5274).

**SUPPLEMENTARY INFORMATION:**

### I. Background

Standard No. 121, *Air Brake Systems*, establishes performance and equipment requirements for braking systems on vehicles equipped with air brakes, including requirements for pneumatic timing. NHTSA recently amended the control signal pressure differential requirements of Standard No. 121, with respect to converter dollies and towing trailers. (57 FR 37902; August 21, 1992) The amendment specifically requires that, for trailers and converter dollies manufactured after August 23, 1993, the pressure differential between the control line input coupling and a 50 cubic inch test reservoir connected to the rear control line output coupling shall not exceed 1 psi at all input pressures between 5 psi and 20 psi and 2 psi at all input pressures greater than 20 psi. Input pressures below 20 psi represent routine braking applications, while input pressures between 20 psi and 40 psi represent moderate to heavy braking applications, and input pressures above 40 psi represent severe braking applications.[1]

The August 1992 amendment was intended to ensure that the control signal ''passes'' through a towing trailer or dolly without being altered along the way. Since the control signal passes through unaltered, each vehicle in a combination unit receives the same brake control signal. This serves to increase the braking compatibility of combination vehicles, since each vehicle in a combination has comparable braking performance. By specifying the maximum permissible differential between the input and output control line pressures, this requirement addresses problems of heat buildup and brake fade during long, gradual downhill runs at relatively low

[1] In today's final rule, NHTSA has decided to modify the limit above 40 psi to allow a 5 percent differential (which at higher pressures exceeds the current limit of 2 psi) based on, among other things, the Society of Automotive Engineer's (SAE's) Recommended Practice SAE J1505, *Brake Force Distribution Test Code Commercial Vehicles.*

pressure brake applications, caused by relatively large brake pressure differentials between the trailers and converter dollies in multiple trailer combinations.

## II. Sealco Petition

On June 18, 1993, Sealco Air Controls (Sealco), a valve manufacturer, submitted to NHTSA a rulemaking petition to amend Standard No. 121 with respect to the control line pressure differential requirements in S5.3.5. Specifically, Sealco requested that NHTSA amend these requirements to eliminate the need to modify the original design of its low opening valves (LOVs) that resulted from the August 1992 amendment. Sealco stated that these modifications degraded the ability of its LOVs to maintain minimal air pressure differentials between the input and output of these valves. These valves are used as control line relay valves and service line relay valves in trailers and converter dollies. The petitioner stated that unlike other relay valves that use a common poppet,[2] the low opening valves have a balanced spool technology[3] that allows the valve to initially open at a relatively low pressure of 1.5 psi. The pressure at which a valve initially opens is referred to as the crack pressure. According to Sealco, the spool technology enables the output pressure delivered by the valve to closely follow (i.e., track) the input control air pressure. As a result, it claimed that hysteresis[4] is not so prevalent with low operating valves as with high crack pressures. This amendment will not significantly affect small businesses, small organizations, and small governmental units that purchase vehicles since this amendment will have no significant cost impact on vehicles.

Hysteresis in a valve may cause the output line pressure of the valve not to track properly the input control line pressure, which may cause the application pressure of the brakes in the trailer to be significantly different than the control line pressure signal. In such situations, the valve's hysteresis may not allow the same pressure to be applied to the trailer brakes as is signalled by the driver's application of the brake control. In the case of increasing brake line pressure, this will cause less braking in the trailer than in the tractor, causing the trailer to ''push'' the tractor. Similarly, when the driver decreases the brake application, the hysteresis in the valve may not allow the brake application in the trailer to decrease to the same degree, resulting in the trailer brakes still being applied to a greater degree than those in the tractor. This causes the kingpin to jerk on the inside of the fifth wheel. Under high speed congested traffic conditions in which the driver may go through several brake applications and releases in rapid succession, the jerking and pushing of the trailer or trailers could be difficult to control. In multiple trailer combinations, this same phenomenon can be a problem between successive trailers as well as between tractors and trailers.

Sealco stated that the use of low operating valves would further NHTSA's goal of ensuring balanced braking in combination vehicles. However, the petitioner claimed that while its valve meets the amendment's application requirements, it does not meet the provision requiring release at high pressure ranges, given the valve's mechanics. To comply with the amendment, Sealco has drilled a hole in the valves' piston, thereby allowing pressure to bleed to the supply side. This action prevents the valves from cracking open when tested according to S5.3.5. Sealco believes that this modification to allow compliance with the amendment has reduced the valves' effectiveness.

## III. Notice of Proposed Rulemaking

On July 13, 1994, NHTSA published a notice of proposed rulemaking (NPRM) proposing to amend Standard No. 121 to permit the use of low opening valves. (59 FR 35672) Specifically, the agency proposed to amend S5.3.5 to address input pressures over 40 psi. Under the proposal, the pressure differential would not be permitted to exceed 2 psi at any input pressure between 20 psi and 40 psi and would not be permitted to exceed 5 percent at any pressure over 40 psi. In other words, the pressure differential requirements would remain the same as the current requirements, except for applications resulting in pressures over 40 psi.

In the NPRM, NHTSA explained that the current requirement may unnecessarily extend the 2 psi limit into the higher pressure ranges where it is not necessary for safety. The requirement is intended to prevent brake fade during relatively low brake applications below 20 psi. The 2 psi limit is relatively more stringent for hard brake applications, i.e., those exceeding 40 psi. The agency requested comments about whether the modification to pressure levels over 40 psi might be detrimental to safety or otherwise inappropriate.

## IV. Comments on the NPRM

NHTSA received two comments on the July 1994 proposal to amend the control line pressure requirements. Mr. Robert Crail, a brake engineer, stated that ''The adoption of the proposed amendment will not have any adverse effect on safety.'' He agreed with the agency that the greater problem area with pressure differentials is at the lower end of the pressure range and not the upper range, which is being broadened slightly. Advocates for Highway and Auto Safety (Advocates) criticized the proposal for several reasons. Advocates was primarily concerned that there was no real world braking data to support the amendment, which it believed would degrade heavy vehicle braking.

## V. Agency Decision

After reviewing the comments and other available information, NHTSA has decided to amend Standard No. 121, with respect to the control line pressure requirements for converter dollies and trailers designed to tow other air braked vehicles. Specifically, the agency has decided to amend S5.3.4 to allow pressure differentials of up to 5 percent at pressures over 40 psi. The current 2 psi allowance is 5 percent of 40 psi, and the agency believes that allowing the same percentage above 40 psi is adequate. Based on its review of the available information, the agency has concluded that the amendment facilitates the use of an alternative technology, without being detrimental to safety. As it explained in the NPRM, NHTSA based the proposed requirement on the Society of Automotive Engineer's (SAE's) Recommended Practice J1505, *Brake Force Distribution Test Code Commercial Vehicles.* In addition, the agency also contacted all the major valve manufacturers about the pressure differential requirements. Based on its review, NHTSA believes that the 2 psi differential in the current requirement is

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[2] A poppet valve has a valve seat like a typical water faucet valve. The air flow is increased as the sealing lip is raised higher off the valve seat by varying the air pressure in the control line. The valve allows increased or decreased air flow from the supply line side of the system.

[3] A spool type valve has a cylinder which slides back and forth inside of a machined hole called a bore. As the spool slides past a port or opening on the side of the bore, the exposed side port then allows the air to flow past the valve spool.

[4] The phenomenon exhibited by a system in which the reaction of the system to changes is dependent upon its past reactions to change. With respect to braking, when the control line input pressure is increased, the relay valve's output (apply pressure) is usually a few psi lower than the control line output pressure, and is usually more than one or two psi above the descending control line pressure. Complications may arise when a subsequent brake application is made before the brakes have fully released after a prior application.

unnecessarily stringent for towing trailers and dollies in hard brake applications over 40 psi. Therefore, the agency has decided to adopt the petitioner's request to permit pressure differentials of up to 5 percent during hard brake applications.

Advocates criticized several aspects of the proposal to amend the pressure differential requirements. Specifically, that organization expressed concern that the amendment (1) was not supported by real world testing data, (2) would adversely affect safety, (3) was inappropriate for certain braking techniques, and (4) would allow spool valves, which it viewed as inferior. As explained below, NHTSA has concluded that Advocates' concerns are without merit.

Advocates contended that there is no real world safety data to support the proposed amendment. It stated that it is ''opposed to safety-related regulatory changes which rely only on *a priori* calculations for gauging probable safety consequences.'' It therefore requested the agency to specify real world braking demonstrations to establish that spool type valves will not degrade safety.

NHTSA disagrees with Advocates' contention that there are no real world data to support the amendments to the control line pressure differential requirements. In fact, the agency has two reports containing a substantial amount of test data regarding real world braking.[5] These reports cover a substantial amount of real world braking demonstrations, including actual control line pressures under a full range of conditions used in a wide range of braking applications. Supporting data also indicate that the cut off point of 40 psi exceeds the braking conditions addressed by this rulemaking. All the test data in the antilock report are real world fleet test data and the down-hill test data in the Braking Strategy study are also real world and based on dozens of test runs. These reports illustrate that the cut-off point of 40 psi is reasonable. They further illustrate that a higher pressure is not necessary since approximately 99 percent of heavy braking occurs below that pressure.

Advocates claimed that the proposed amendments to the control line pressure requirements would have a deleterious effect on safety under severe braking conditions. That organization, however, did not state what it considers to be severe braking conditions.

NHTSA believes that Advocates' concern that the amendment would adversely affect safety is without merit, since, as mentioned above, approximately 99 percent of braking occurs at 40 psi or less. At 75 psi, which represents a panic stop on dry pavement that would most likely lock all the wheels unless the vehicle were fully loaded, the Sealco valves showed only a 1.5 psi tracking variation[6] in either the ascending or descending brake line pressures.

With regard to the safety of tracking error variation, the agency prefers a tracking error of zero as an ideal. However, that would be unrealistic for a valve manufacturer to achieve. Because of manufacturing variations in the valves along with hysteresis, 2 psi is a reasonable pressure limit at the low end.

Advocates commented that the agency mischaracterized braking practices. It stated that while snubbing (i.e., intermittently exerting force on the brake pedal) brakes at relatively low pressures is the preferred braking technique, drivers often ''ride'' (i.e., exert a constant force on the brake pedal) the brakes at higher pressures in long downhill descents.

NHTSA believes that Advocates' statement is not accurate, since all the agency's research data show that ''riding'' the brakes produces pressures that are approximately 50 percent lower than ''snubbing'' pressures. The agency further notes that Advocates' concern about snubbing or riding the brakes is not relevant since the air pressure requirements are being amended for pressures higher than those used in snubbing or riding the brakes. The air system pressure in either of the two braking methods is less than the 40 psi cut-off point established by this amendment. Worst-case conditions produced by snubbing in mountain grade descents average about 27 psi with peaks to 32 psi. Riding the brakes results in air pressure that seldom exceeds 10 psi, even on mountain descents.[7]

Advocates expressed concern that low pressure spool type valves could adversely affect safety compared to poppet valves. However, NHTSA notes that each type of valve is used in specific applications to its own best advantage. The agency is aware of no application in which either type should be restricted by performance requirements in Standard No. 121. There are no data available on the performance of air brake spool valves vs poppet type air brake valves, because the former type of values have not posed a problem.

*Effective date.* Each order amending a safety standard is required to take effect no sooner than 180 days from the date the order is issued unless ''good cause'' is shown that an earlier effective date is in the public interest. NHTSA has determined that there is ''good cause'' not to provide the 180 day lead-in period given that this amendment will not impose any mandatory requirements on manufacturers. The public interest in being able to use an alternative technology will also be served by not delaying the introduction of the requirement. Based on the above, the agency has further determined that there is good cause to have an effective date 30 days after publication in the **Federal Register**.

## VI. Rulemaking Analyses and Notices

### *1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

This rulemaking was not reviewed under E.O. 12866. NHTSA has analyzed this rulemaking and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule has no mandatory effects and therefore imposes no costs. Further, it does not make possible cost savings. Instead, the rulemaking simply permits the use of spool valve technology.

### *2. Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment will not have a significant economic impact on a substantial number of small entities. Vehicle and brake manufacturers typically do not qualify as small

[5] See, (1) ''An In-Service Evaluation of the Performance, Reliability, Maintainability and Durability of Antilock Braking Systems (ABSs) for Semitrailers'', DOT HS 806059; October 1993, and (2) ''The Influence of Strategy on Brake Temperatures in Mountain Descents'' DTFH61–89–C–00106; March 1992.

[6] Tracking variation is a measure of how well matched the air pressure is between the (control) line side of the air brake system and the actual (service) air pressure being sent to the brake chambers. For example, if the driver's foot is placed on the brake pedal such that a 20 psi signal is sent to the valve that releases the air from the air reservoir on the trailer and the control valve releases 20 psi to the brakes, there is ''zero'' tracking error. If the air pressure at the brake chambers is between 19 to 21 psi, the tracking error would be within the 1 psi requirement of the standard.

[7] A report titled ''The Influence of Strategy on Brake Temperatures in Mountain Descents'' DTFH61–89–C–00106; March 1992, contains extensive data by both VRTC and The University of Michigan which relate to the air brake pressure required in ''snubbing' and ''riding'' of the brakes.

entities. For these reasons, no regulatory flexibility analysis has been prepared.

*3. Executive Order 12612 (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 rule will not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

*4. National Environmental Policy Act*

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that the rule will not significantly affect the human environment.

*5. Civil Justice Reform*

This rule will not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30111), 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. Section 105 of the Act (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.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency is amending Standard No. 121, *Air Brake Systems,* part 571 of Title 49 of the Code of Federal Regulations as follows:

## PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. In § 571.121, S5.3.5 introductory text and S5.3.5(a) are revised to read as follows:

**§ 571.121 Standard No. 121; Air brake systems.**

* * * * *

S5.3.5 Control signal pressure differential—converter dollies and trailers designed to tow another vehicle equipped with air brakes.

(a) For a trailer designed to tow another vehicle equipped with air brakes, the pressure differential between the control line input coupling and a 50-cubic-inch test reservoir attached to the control line output coupling shall not exceed the values specified in S5.3.5(a)(1), (2), and (3) under the conditions specified in S5.3.5(b)(1) through (4):

(1) 1 psi at all input pressures equal to or greater than 5 psi, but not greater than 20 psi; and

(2) 2 psi at all input pressures equal to or greater than 20 psi but not greater than 40 psi; and

(3) not more than a 5-percent differential at any input pressure equal to or greater than 40 psi.

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Issued on: July 20, 1995.

**Ricardo Martinez,**

*Administrator.*

[FR Doc. 95–18381 Filed 7–27–95; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 672

**[Docket No. 950206041–5041–01; I.D. 072195A]**

## Groundfish of the Gulf of Alaska; Pollock in the Eastern Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting retention of pollock in the Eastern Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catches of pollock in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the pollock total allowable catch (TAC) in the Eastern Regulatory Area of the GOA has been reached.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), July 24, 1995, until 12 midnight A.l.t, December 31, 1995.

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Pearson, 907–486-6919.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii), the TAC for pollock in the Eastern Regulatory Area of the GOA was established by the final 1995 harvest specifications of groundfish (60 FR 8470, February 14, 1995), as 3,360 metric tons.

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3), that the TAC for pollock in the Eastern Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of pollock in the Eastern Regulatory Area of the GOA be treated as prohibited species in accordance with § 672.20(e).

**Classification**

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 24, 1995.

**Richard W. Surdi,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 95–18567 Filed 7–25–95; 2:15 pm]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 60, No. 145
Friday, July 28, 1995

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

## DEPARTMENT OF AGRICULTURE

### Consolidated Farm Service Agency

### 7 CFR Part 737

**RIN 0560–AD92**

### Tobacco Warehouses

**AGENCY:** Consolidated Farm Service Agency, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Consolidated Farm Service Agency (CFSA) is proposing to amend its regulations pertaining to licensed tobacco warehouses under the United States Warehouse Act (USWA). The proposed rule would define warehouse to exclude places which have contracted with a cooperative marketing association (association) to make Commodity Credit Corporation (CCC) price support advances to producers on behalf of the association and to which producers will deliver their tobacco for display and auction (hereinafter auction warehouses). Accordingly, the proposed rule removes such places from the jurisdiction of the USWA Tobacco Warehouse Regulations as provided for under 7 CFR part 737. The proposed rule also makes changes with respect to package arrangement and some clerical corrections.

**DATES:** Comments must be received by August 28, 1995 to be assured of consideration.

**ADDRESSES:** Comments must be submitted to Acting Director, Warehouse and Inventory Division (WID), CFSA, P.O. Box 2415, Washington, DC 20013–2415, FAX 202–690–0014.

All submissions will be available for public inspection in room 5962, South Agriculture Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 5 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Steve Mikkelsen, Licensing Authority Branch, WID, CFSA, P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–7433 or FAX 202–690–3123.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

This proposed rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

#### Executive Order 12372

This program/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 at 48 FR 29115 (June 24, 1983).

#### Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

#### Paperwork Reduction Act

The amendments set forth in this proposed rule do not generate any new or revised information collection or recordkeeping requirements on the public.

#### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule, because it has been determined that this rule will not have a significant effect on a substantial number of small businesses. Licensing under the USWA is strictly voluntary on the warehouse operator's part.

#### Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### Background

The purpose of this proposed rule is to remove tobacco auction warehouses from coverage under the USWA and the regulations issued thereunder (7 CFR part 737). The USWA, as amended (7 U.S.C. 241 et seq.), provides that the Secretary of Agriculture may issue a license for the conduct of public warehouses that store agricultural commodities.

The USWA is implemented, as it pertains to tobacco warehouses, by regulations at 7 CFR part 737 and is administered by CFSA. Approximately, 1,500 entities hold licenses for storing eight different agricultural commodities. Presently, there are six tobacco auction warehouses licensed under the USWA.

In the tobacco industry, there are generally two types of tobacco warehouses: (1) Long term storage warehouses and (2) tobacco auction warehouses. The first type usually stores processed tobacco or raw tobacco that has been chopped, placed in containers, and otherwise prepared for long term storage. The second type receives raw tobacco from producers and retains it for a limited period of time, generally less than 30 days, until the tobacco is sold in an auction or transferred to a tobacco association for placement under the CCC price support program. Unlike a warehouse whose primary purpose is to store processed tobacco for a long period of time, the primary purpose of an auction warehouse is to market producer-owned tobacco. Presently, there are approximately 400 tobacco auction warehouses.

The primary objectives of the USWA are to protect those who store commodities in public warehouses; assure the integrity of warehouse receipts as documents of title to be used as collateral; and set, regulate, and maintain superior standards for said warehouse operators. Because the auctioning of tobacco is a merchandising function, a function which is not regulated by the USWA, the USWA and its regulations, thereunder, were not intended to cover tobacco auction warehouses. This proposed rule, however, does not affect the U.S. Department of Agriculture's (USDA) other regulatory activity as it applies to tobacco auction warehouses.

The primary functions of tobacco auction warehouses are currently regulated by several USDA agencies. For example, tobacco auction warehouses approved by the Agricultural Marketing Service (AMS) and CFSA may sell producer-owned tobacco. AMS strictly regulates the manner in which the tobacco must be stored, handled,

presented for sale, and graded for sale. See, 7 CFR part 29. Further, the AMS regulations include detailed recordkeeping requirements. Further, AMS has representatives, on-site, during all sales of tobacco.

In addition the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended, strictly regulate the sale of tobacco. CCC and CFSA regulate auction warehouses through the Tobacco Marketing Quota and Price Support Programs they administer. These regulations are codified at 7 CFR parts 723 and 1464. Under these regulations, CCC and CFSA require that warehousemen retain detailed records of all tobacco handled by them. The tobacco and the transactions associated with it must be tracked and recorded from the time the tobacco is brought into the warehouse by producers, to the time it leaves the warehouse.

The type and level of regulation by AMS, CCC, and CFSA are unique to auction warehouses. Producers who believe they have not been treated fairly by the warehouseman may seek relief directly from the on-site representatives of the various government agencies. If such allegations are confirmed, under the provisions of 7 CFR parts 723 and 1464, CCC or CFSA has the right to take appropriate actions against the tobacco auction warehouse to protect the interests of producers. Accordingly, because tobacco auction warehouses are (1) more involved with merchandising (which is a non-USWA function) as opposed to the long term storage of tobacco and (2) sufficiently regulated by other USDA regulations, CFSA proposes to eliminate the application of the USWA and its regulations to tobacco auction warehouses. This action further reduces the amount of federal regulation.

**List of Subjects in 7 CFR Part 737**

Administrative practice and procedure, Agricultural Commodities, Tobacco, Surety Bonds, Warehouses.

Accordingly, the provisions of 7 CFR part 737 are amended as follows:

## PART 737—TOBACCO WAREHOUSES

1. The authority citation for part 737 is revised to read as follows:

**Authority:** 7 U.S.C. 268.

2. Section 737.2 is amended by revising the introductory text and paragraphs (f), (i), and (j) to read as follows:

**§ 737.2 Terms defined.**

For the purposes of this part, unless otherwise provided, the following terms shall mean:

* * * * *

(f) *Service.* The Consolidated Farm Service Agency of the U.S. Department of Agriculture.

* * * * *

(i) *Warehouse.* Any suitable building, structure, or other protected enclosure in which tobacco is, or may be, stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which tobacco is, or may be, stored and for which a license has been issued under the act except for any place, including any suitable building, structure, or other protected enclosure to which tobacco is delivered by the producers thereof, or their agents for the purposes of obtaining CCC price support advances and for the display and auction of tobacco.

(j) *Warehouseman.* Any person lawfully engaged in the business of storing tobacco and holding a warehouse license.

* * * * *

3. Section 737.4 is amended by adding the following sentence at the end of the paragraph:

**§ 737.4 Grounds for not issuing license.**

* * * Further, a license shall not be issued to any place to which tobacco is delivered by the producers thereof, or their agents, for the purposes of obtaining CCC price support advances and for the display and auction of tobacco.

4. In § 737.34 paragraph (a) is revised and paragraph (b) is amended by adding a period after the word ''section'' and removing the remainder of the paragraph.

**§ 737.34 Package arrangement.**

(a) Each warehouseman shall arrange the packages of warehoused tobacco so that the identification number thereon as required by § 737.33 is visible, readily accessible, and shall arrange all packages so as to permit an accurate check thereof, unless waived in writing by the Administrator.

* * * * *

**§ 737.50 [Amended]**

5. Section 737.50 is amended by removing ''order of Agricultural Marketing Service, USDA'', and by adding ''Service.''

Signed at Washington, DC, on July 24, 1995.

**Bruce R. Weber,**

*Acting Administrator, Consolidated Farm Service Agency.*

[FR Doc. 95–18552 Filed 7–27–95; 8:45 am]

BILLING CODE 3410–05–P

## Agricultural Marketing Service

## 7 CFR Part 1137

**[DA–95–21]**

## Milk in the Eastern Colorado Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed suspension of rule.

**SUMMARY:** This document invites written comments on a proposal to suspend certain performance standards of the Eastern Colorado Federal milk order. The suspension was requested by Mid-America Dairymen, Inc., a cooperative association that supplies milk for the market's fluid needs. The suspension was requested to prevent uneconomic milk movements that otherwise would be required to maintain pool status for milk of producers who have been historically associated with the order.

**DATES:** Comments are due no later than August 17, 1995.

**ADDRESSES:** Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

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

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

Notice is hereby given that, pursuant to the provisions of the Act, the suspension of the following provisions of the order regulating the handling of milk in the Eastern Colorado marketing area is being considered:

1. For the months of September 1, 1995, through February 29, 1996: In § 1137.7(b), the second sentence is amended by suspending the words ''plant which has qualified as a'' and ''of March through August''; and

2. For the months of September 1, 1995, through August 31, 1996: In § 1137.12(a)(1), the first sentence is amended by suspending the words ''from whom at least three deliveries of milk are received during the month at a distributing pool plant''; and in the second sentence ''30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of'', and the word ''distributing''.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 20th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 20 days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

**Statement of Consideration**

The proposed rule would suspend certain portions of the pool plant and producer definitions of the Eastern Colorado order. The proposed suspension would make it easier for handlers to qualify milk for pooling under the order.

The proposed suspension was requested by Mid-America Dairyman, Inc. (Mid-Am), a cooperative association that has pooled milk of dairy farmers on the Eastern Colorado order for several years. Mid-Am has requested the suspension to prevent the uneconomic and inefficient movement of milk for the sole purpose of pooling the milk of producers who have been historically associated with the Eastern Colorado order.

Mid-Am requests, for the months of September 1995 through February 1996, the removal of the restriction on the months when automatic pool plant status applies for supply plants. Mid-Am also proposes that, for the months of September 1995 through August 1996, the touch-base requirement not apply and the diversion allowance for cooperatives be raised.

These provisions have been suspended previously in order to maintain the pool status of producers who have historically supplied the fluid needs of Eastern Colorado distributing plants. Mid-Am states that the marketing conditions that justified the prior suspensions continue to exist.

Mid-Am asserts that they have made a commitment to meet the fluid milk requirements of distributing plants if the suspension request is granted. Without the suspension, Mid-Am contends that it will be necessary to ship milk from distant farms to Denver-area bottling plants to qualify milk for pooling. The distant milk will displace locally-produced milk that would then have to be shipped from the Denver area to manufacturing plants located in outlying areas.

In addition, Mid-Am maintains that ample supplies of locally-produced milk that can be delivered directly to distributing plants will be available to meet the market's fluid needs without requiring shipments from supply plants. Mid-Am also claims that neither the elimination of the touch-base requirement for producers nor the increase in the amount of milk that can be diverted to nonpool plants by a cooperative should jeopardize the needs of the market's fluid processors.

Accordingly, it may be appropriate to suspend the aforesaid provisions for the time periods stated.

**List of Subjects in 7 CFR Part 1137**

Milk marketing orders.

The authority citation for 7 CFR Part 1137 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

Dated: July 24, 1995.

**Lon Hatamiya,**

*Administrator.*

[FR Doc. 95–18593 Filed 7–27–95; 8:45 am]

BILLING CODE 3410–02–P

## FEDERAL HOUSING FINANCE BOARD

## 12 CFR Part 960

**[No. 95–N–07]**

## Amendment of Affordable Housing Program Regulation

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Housing Finance Board (Board) is soliciting comments on a proposal to amend its regulation governing the operation of the Affordable Housing Program (AHP or Program). The proposed rule would add a new provision authorizing a Federal Home Loan Bank (Bank) to set aside a limited portion of its available AHP subsidies to assist first-time homebuyers pursuant to a program meeting specific requirements set forth in the proposed rule. In addition, the proposed rule would permit a Bank to establish a first-time homebuyer program with requirements different from those specifically set forth, subject to prior approval of the Board.

**DATES:** Comments on this proposed rule must be received in writing on or before August 28, 1995.

**ADDRESSES:** Comments should be mailed to: Federal Housing Finance Board, Executive Secretariat, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** Sharon B. Like, Attorney-Advisor, Office of General Counsel, (202) 408–2930, or Diane E. Dorius, Deputy Director, Office of Housing Finance,

(202) 408–2576, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:**

## I. Statutory and Regulatory Background

Section 10(j)(1) of the Federal Home Loan Bank Act (Bank Act) requires each Bank to establish a Program to subsidize the interest rate on advances to members of the Federal Home Loan Bank System (Bank System) engaged in lending for long-term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. *See* 12 U.S.C. 1430(j)(1). The Board is required to promulgate regulations governing the Program. *See* 12 U.S.C. 1430(j)(9); 12 CFR part 960.

Under the Board's AHP regulation, each Bank must make a specified annual contribution to fund its Program. *See* 12 CFR 960.10. During each calendar year, each Bank accepts applications for funds from its members during two of four quarterly funding periods, or ''rounds.'' *See* 12 CFR 960.4. Applications are reviewed and recommended, and AHP funds are awarded to applicants through, a competitive scoring process set forth in the AHP regulation. *See* 12 CFR 960.5. AHP funds are awarded to the applicants whose applications score the highest among all the applications received by the Bank in that funding round. *See id.*

## II. Analysis of the Proposed Rule

The Board believes that promoting homeownership for first-time homebuyers is a significant part of the mission of the Bank System. In furtherance of that goal, the Board and the Banks recently joined a partnership agreement to promote the President's National Homeownership Strategy to expand homeownership to millions of households by the year 2000. The Board believes that permitting the Banks to direct a portion of their AHP contribution to assist low- and moderate-income, first-time homebuyers is consistent with its commitment to the National Homeownership Strategy.

The proposed rule would amend the AHP regulation to authorize a Bank to set aside up to the greater of $1 million or 10 percent of its annual required AHP contribution to fund a Matched Savings First-Time Homebuyers' Initiative (Initiative), through which the Bank would assist low- and moderate-income, first-time homebuyers to purchase homes.

Members may be pre-approved by their Bank for participation in an Initiative if they: have established a savings account program offering dedicated savings accounts to eligible households; have established a first-time homebuyer policy that defines the qualifications for being a ''first-time'' homebuyer and that includes financial or other incentives for such homebuyers; and have established or sponsor a homebuyer counseling program. Eligible households must have incomes at or below 80 percent of area median income. Participating households must make regular deposits in dedicated savings accounts maintained with the members according to an agreed upon schedule of savings for a minimum of 10 months, and must complete the required homebuyer counseling program. Each dollar of a household's savings will be matched by the member with up to three dollars of Bank AHP funds. Each Bank may determine the appropriate ratio of AHP funds-to-savings of a participating household (with a maximum of three-to-one), which ratio shall apply to all households participating in the Bank's initiative. The total amount of AHP funds received by a household may not exceed $5,000. The household is expected to use the funds within one year of its acceptance into the Initiative to pay for downpayment and closing costs in connection with its first-time purchase of a one-to-four family, owner-occupied property (including a condominium or cooperative housing unit) to be used as its primary residence.

A home purchased by a participating household with funds received under an Initiative must be subject to a deed restriction, ''soft'' second mortgage or other legally enforceable mechanism, pursuant to the requirements set forth in the proposed rule, that would enable the Bank to recapture from the member or directly from the seller a *pro rata* portion of those funds if the home is sold by the initial household to a household that is not low- or moderate-income, within 5 years (or longer, at the discretion of the Bank) from the date of purchase by the participating household. The proposed rule would allow for Bank waiver of the recapture requirement if its imposition would cause undue hardship on the seller.

Since the requirements governing the eligibility of households and the uses of set-aside funds under the Initiative are to be uniformly applied, funding of such Initiatives will not be subject to the competitive scoring process applicable to regular AHP applications under the regulation. Instead, a Bank would make set-aside funds available to an Initiative on a rolling, first come, first-served basis. In addition, the proposed rule would allow a Bank to make available up to $1 million of additional AHP funds from the next year's Initiative set-aside if demand for funds under the Initiative exceeds the amount set aside in the current year.

In order to allow the Banks to implement an Initiative as soon as possible, the Board's proposal would allow a Bank to establish an Initiative meeting the specific requirements set forth in the proposed rule without obtaining prior Board approval. However, the Board recognizes that the Banks may develop strategies for implementing first-time homebuyer programs that differ from the model in the proposed rule, but which may be equally, or more, effective. The Board believes that the Banks should have flexibility for innovation and the ability to respond to local conditions in providing assistance for first-time homebuyers. Therefore, proposed § 960.5(g)(2) would permit Banks to establish first-time homebuyer programs that are different from that described in the proposed rule, with prior Board approval.

While public comment is being requested on all aspects of the proposed rule, the Board is requesting specific comment on several issues of note.

First, the Bank Act requires that owner-occupied housing financed under the AHP must be ''long-term.'' *See* 12 U.S.C. 1430(j)(1). Commenters should be aware that the Board specifically has requested comment on the appropriate ''long-term'' period applicable generally to owner-occupied housing financed under the AHP in a previously published proposal. *See* 59 FR 1323 (Jan. 10, 1994). In the preamble to that proposal, the Board discussed alternative proposals to set the ''long-term'' requirement at 5 years or 30 years. The Board here has proposed 5 years as the minimum ''long-term'' requirement that would be applicable solely to homes purchased with funds provided under an Initiative, but that would not apply to AHP projects receiving funding through the regular AHP competitive scoring process set forth in §§ 960.4 and 960.5 of the AHP regulation. *See* 12 CFR 960.4, 960.5. In making this proposal, it is not the Board's intention to preclude continuing dialogue on the issue of ''long-term'' retention in this or any other context, but rather is to encourage a full discussion. Therefore, the Board specifically requests comment on the appropriate length of the ''long term'' requirement for homes purchased through an Initiative.

Second, the proposal would allow a Bank to commit, in any year, a portion of its future AHP contributions if

demand for Initiative funds in that year exceeded that year's set-aside. The commitment in the current year of future AHP contributions currently is not permitted under the AHP regulation. The Board specifically requests comment on this aspect of the proposed rule as well.

Third, the Board specifically solicits comment on whether other, non-conforming set-aside programs proposed by a Bank under proposed § 960.5(g)(2) should be limited to programs that assist first-time homebuyers, or whether it would be practicable to broaden the language of the proposal to allow for assistance to be provided to other categories of activities related to homeownership that promote the National Homeownership Strategy, such as improving and rehabilitating existing homes and encouraging homeownership strategies that revitalize distressed communities.

Finally, the Board specifically, requests comment on whether the funding limit of the greater of $1 million or 10 percent of a Bank's annual required AHP contribution: (a) is appropriate generally; and (b) should apply to other, non-conforming set-aside programs under proposed § 960.5(g)(2), or whether the funding limits for such other programs should be left to the discretion of the Board.

## III. Regulatory Flexibility Act

The proposed rule applies only to the Banks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, *see id.* section 605(b), the Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

## List of Subjects for 12 CFR Part 960

Banks, Banking, Credit, Federal home loan banks, Housing.

Accordingly, part 960, chapter IX, title 12, subchapter E, Code of Federal Regulations, is hereby proposed to be amended as follows:

### SUBCHAPTER E—AFFORDABLE HOUSING

## PART 960—AFFORDABLE HOUSING PROGRAM

1. The authority citation for part 960 is revised to read as follows:

**Authority:** 12 U.S.C. 1422a, 1422b, 1430(j).

2. Section 960.4 is amended by revising the first sentence of paragraph (a) to read as follows:

**§ 960.4 Applications for funding.**

(a) Except as provided in § 960.5(g), the Program is based on District-wide competitions administered by the Board. * * *

* * * * *

3. Section 960.5 is amended by adding a new paragraph (g) and by revising paragraph (a)(1) to read as follows:

**§ 960.5 Project scoring and funding.**

(a) *General.* (1) Each Bank will evaluate all applications received pursuant to § 960.4(a) from its members that satisfy the use provisions identified in § 960.3(b).

* * * * *

(g) *Set-Aside programs.*—(1) *Programs exempt from prior board approval.* Without the prior approval of the Board, a Bank may set aside annually up to the greater of $1 million or 10 percent of its annual required Affordable Housing Program contribution to implement a matched savings first-time homebuyers' initiative that meets all of the following requirements:

(i) *Announcement of available bank funds.* The Bank shall notify its members of the amount of annual funds available under the initiative;

(ii) *Pre-approval of member participants.* The Bank shall approve a member's participation in the initiative if the member has:

(A) Established a savings account program offering dedicated savings accounts to eligible households;

(B) Established a first-time homebuyer policy that defines the qualifications for being a ''first-time homebuyer'' and that includes financial or other incentives for such first-time homebuyers;

(C) Established a homebuyer counseling program based on those offered by or in conjunction with a not-for-profit housing agency or other recognized counseling organization;

(D) Committed that the Bank or member participant will be entitled to recapture of the equivalent amount of the matching funds, as provided in paragraph (g)(1)(ix) of this section;

(iii) *Approval of initial enrollment of households.* The Bank shall approve the initial enrollment, through the approved member participant, of a household as a potential beneficiary in the initiative, if the household:

(A) Is low- or moderate-income, as defined in § 960.1(g);

(B) Has opened a dedicated savings account with the member participant and established a schedule of savings into the account;

(C) Meets the requirements of the member participant's first-time homebuyer policy;

(D) Has enrolled in a homebuyer counseling program established by the member participant that is based on those offered by or in conjunction with a not-for-profit housing agency or other recognized counseling organization;

(E) Has agreed to obtain mortgage financing from the member participant for the purchase of a home;

(iv) *Bank program acceptance six months after initial enrollment and reservation of bank matching funds.* The Bank shall accept a household into its initiative, shall reserve, in the name of the household, matching funds as targeted in the household's schedule of savings for a period of one year, and shall notify the member participant and household of such acceptance, if, six months after the initial enrollment date of the household, the member participant certifies to the Bank that the household is progressing satisfactorily by participating in the homebuyer counseling program and systematically depositing funds to its dedicated savings account according to its agreed schedule of savings;

(v) *Verification of household progress.* The Bank shall require the member participant to verify, every six months from a household's acceptance date into the initiative, the household's progress in completing the homebuyer counseling program and making deposits to its dedicated savings account according to its agreed schedule of savings;

(vi) *Approval of matching funds drawdown.* The Bank shall approve a request from a member participant for matching funds, in an amount equal to, in the Bank's discretion, up to three times the amount of a household's savings in its dedicated savings account, up to a maximum of $5,000 per household, and shall credit such funds to the member participant's account, if the member participant certifies to the Bank that:

(A) The household made deposits to its dedicated savings account according to its agreed schedule of savings for a minimum of ten months;

(B) Closing on the sale of a home to the household has occurred within one year of the household's acceptance date into the initiative, or a later period if the Bank determines that reasonable circumstances justified extending such time period for the use of the funds;

(C) The household has completed the required homebuyer counseling program;

(D) The household has received the financial or other incentives committed by the member participant pursuant to its first-time homebuyer policy;

(E) A deed restriction, ''soft'' second mortgage or other legally enforceable mechanism exists on the household's home that entitles the Bank or member participant to recapture of the equivalent amount of the matching funds, as provided in paragraph (g)(1)(ix) of this section;

(vii) *Eligible uses of funds.* Households receiving funds under an initiative may use such funds only for the payment of downpayment or closing costs in connection with the household's purchase of a one-to-four family, owner-occupied residential property (including a condominium or cooperative housing unit) to be used as its primary residence;

(viii) *Availability of funds.* (A) The Bank shall make its initiative funds available on a rolling, first come, first-served basis;

(B) The Bank may reserve the option, if needed because demand for its funds in a given year exceeds the amount of set-aside funds available for that year, to:

(*i*) Make available up to an additional $1 million from the next year's set-aside of funds under such initiative; or

(*ii*) Establish a waiting list or other process by which households would be approved by the Bank to receive funds under the initiative;

(ix) *Long-term requirement—Recapture of funds upon resale.* The Bank shall require that a home purchased using funds under an initiative be subject to a deed restriction, ''soft'' second mortgage or other legally enforceable mechanism that requires that, if the home is sold prior to the end of a period of not less than 5 years from the date of purchase by the initial household, to a household that is not low- or moderate-income:

(I) The Bank or its designee be given notice of the sale; and

(II) The seller be required to repay a pro rata share, except for de minimis amounts determined by the Bank, of the funds provided under the initiative, reduced for every year the seller owned the home, to be repaid from any net gain from the sale of the home after deduction for sales expenses, and to be returned to the Bank to be made available for other Affordable Housing Program projects, except that the Bank in its discretion may waive such repayment requirement if its imposition would cause undue hardship on the seller, as defined by the Bank;

(x) Each Bank may establish its own procedures for further implementation of the requirements of this paragraph (g)(1).

(2) *Other programs.* A Bank may set aside a portion of its annual required Affordable Housing Program contribution to implement a first-time homebuyer program that does not meet the requirements of § 960.5(g)(1), provided the program otherwise satisfies the requirements of 12 U.S.C. 1430(j), and receives the prior approval of the Board.

Dated: July 13, 1995.

By the Federal Housing Finance Board.

**Bruce A. Morrison,**

*Chairman.*

[FR Doc. 95–18424 Filed 7–27–95; 8:45 am]

BILLING CODE 6725–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 33

**[Docket No. 95–ANE–42; Notice No. SC–95–04–NE]**

## Special Conditions: Allison Engine Company Model 250–C40 Turboshaft Engine

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for the Allison Engine Company Model 250–C40 turboshaft engine. This engine will have novel or unique engine ratings that are not defined by the applicable airworthiness regulations. This notice proposes the safety standards for those novel or unique ratings that the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 33 of the Federal Aviation Regulations (FAR).

**DATES:** Comments must be submitted on or before August 28, 1995.

**ADDRESSES:** Comments on this proposal may be submitted in triplicate to: Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 95–ANE–42, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments must be marked: Docket No. 95–ANE–42. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chung Hsieh, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; (617) 238–7115; Fax (617) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under **ADDRESSES.** All communications received on or before the closing date for comments, specified under **DATES,** will be considered by the Administrator before taking action on the proposal. The proposal contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed special conditions. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this proposal will be filed in the docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–ANE–42'' The postcard will be dated stamped and returned to the commenter.

### Background

On May 11, 1993, the Allison Engine Company (AE) applied for an amendment to type certificate E1GL to include a new model 250–C40 turboshaft engine. On March 30, 1995, the Allison Engine Company applied for 30-second one engine inoperative (OEI) and 2-minute OEI ratings for the engine. The AE Model 250–C40 turboshaft engine will be rated at 30-Second OEI, 2-Minute OEI, 30-Minute OEI, Continuous OEI, Takeoff, and Maximum Continuous ratings.

The applicable airworthiness requirements do not contain 30-Second OEI and 2-Minute OEI rating definitions, and do not contain adequate or appropriate safety standards for the type certification of these new and unusual engine ratings.

### Type Certification Basis

Under the provisions of section 21.17(a) of the FAR, Allison Engine Company must show that the AE Model

250–C40 turboshaft engine meets the requirements of the applicable regulations in effect on the date of the application. The applicable regulations for this engine is FAR part 33, effective February 1, 1965, as amended by Amendments 33–1 through 33–4.

The Administrator finds that the applicable airworthiness regulations in 33, as amended, do not contain adequate or appropriate safety standards for the AE Model 250–C40 turboshaft engine because of the new and unique engine ratings. Therefore, the Administrator proposes special conditions under the provisions of section 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with section 11.49 of the FAR after public notice and opportunity for comment, as required by sections 11.28 and 11.29(b), and become part of the type certification basis in accordance with section 21.17(a)(2).

## Conclusion

This action affects only certain novel or unusual design features on one model engine. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the engine.

## List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citations for these special conditions is as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421, 1423; 49 U.S.C. 106(g).

## The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Allison Engine Company (AE) Model 250–C40 turboshaft engine:

### § 33.7 Engine ratings and operating limitations.

In addition to the requirements of section 33.7, the following ratings are defined as:

(a) Rated 30-Second One-Engine-Inoperative (OEI) Power: The approved brake horsepower developed statically in standard atmosphere at sea level, or at a specified altitude and temperature, for continued one-flight operation after the failure of one engine in multi-engine rotorcraft, limited to three periods of use, no greater than 30 seconds each, at rotor shaft rotation speed and gas temperature established for this rating by part 33 or this special condition.

(b) Rated 2-Minute OEI Power: The approved brake horsepower, developed statically in standard atmosphere at sea level, or at a specified altitude and temperature, for continued one-flight operation, after failure of one engine in multi-engine rotorcraft, limited to three periods of use, of up to two minutes each, at rotor shaft rotation speed and gas temperature established for this rating by part 33 or this special condition.

### § 33.4 Instructions for continued airworthiness.

In addition to the requirements of section 33.4, the mandatory inspection and maintenance actions required following the use of the 30-Second or 2-Minute OEI rating, must be included in the airworthiness limitations section of the appropriate engine manuals.

### § 33.27 Turbine, compressor, fan, and turbo-supercharger rotors.

In addition to the requirements of section 33.27, the following additional test requirements must be considered under 33.27(c)(2). For 30-Second and 2-Minute OEI conditions, test for a period of 5 minutes—

(a) At 100 percent of the highest speed that would result from failure of the most critical component of each turbine and compressor or system in a representative installation of the engine when operating at 30-Second and 2-Minute OEI rating conditions.

(b) The test speed must take into account minimum material properties, maximum operating temperature, and the most adverse dimensional tolerances.

(c) Following the test, rotor growth and distress beyond dimensional limits for an overspeed condition is permitted for 30-Second and 2-Minute OEI rating only, provided the structural integrity of the rotor is maintained, as shown by a procedure acceptable to the Administrator.

### § 33.29 Instrument connection.

In addition to the requirements of section 33.29, the engine must provide for a means:

(a) To indicate when the engine is at either 30-Second or 2-Minute OEI-rated power level; and

(b) To determine the elapsed time of operation at 2-Minute OEI and 30-Second OEI rated power levels.

### § 33.67 Fuel system.

In addition to the requirements of section 33.67, the engine must provide for a means for automatic availability and automatic control of the 30-second OEI power; and engine test runs must be performed to demonstrate automatic switching to a 30-Second OEI rating condition.

### § 33.83 Vibration test.

In addition to the requirements of section 33.83, the following additional test requirements must be considered under 33.83(a):

For 30-Second and 2-Minute OEI rating conditions, the vibration survey shall cover the ranges of power, and both the physical and corrected rotational speeds for each rotor system, corresponding to operations throughout the range of ambient conditions in the declared flight envelope, from the minimum rotor speed up to 103 percent of the maximum rotor speed permitted for 2-Minute OEI rating, and up to 100 percent of the maximum rotor speed permitted for 30-Second OEI rating speed. If there is any indication of a stress peak arising at high physical or corrected rotational speeds, the surveys shall be extended in order to quantify the phenomenon and to ensure compliance with the requirements of section 33.63.

### § 33.85 Calibration tests.

In addition to the requirements of section 33.85, tests performed at the 30-Second and 2-Minute OEI ratings, during the applicable endurance test prescribed in section 33.87, may be used to show compliance with the requirements of section 33.85.

### § 33.87 Endurance test.

In addition to the requirements of section 33.87, an engine test must be conducted four times, using the following test sequence, for a total of not less than 120 minutes:

(a) Takeoff Power—three minutes at rated takeoff power.

(b) 30-Second OEI power—thirty seconds at rated 30-Second OEI power.

(c) 2-Minute OEI power—two minutes at rated 2-Minute OEI power.

(d) 30-Minute OEI, Continuous OEI, or Maximum Continuous power—five minutes at rated 30-Minute OEI power, or rated Continuous OEI power, or rated Maximum Continuous power, whichever is greatest, except that during the first test sequence this period shall be 65 minutes.

(e) 50 percent takeoff power—one minute at 50 percent takeoff power.

(f) 30-second OEI power—thirty seconds at rated 30-Second OEI power.

(g) 2-minute OEI power—two minutes at rated 2-Minute OEI power.

(h) Idle power—one minute at Idle power.

**§ 33.88 Engine overtemperature test.**

In addition to the requirements of section 33.88, the following must be performed:

(a) For engines that do not provide a means for temperature limiting; conduct a test for a period of five minutes at the maximum permissible power-on RPM, with the gas temperature at least 75 degrees Fahrenheit higher than the 30-Second OEI rating operating temperature limit.

(b) For engines that provide a means for temperature limiting; conduct a test for a period of four minutes at the maximum permissible power-on RPM, with the gas temperature at least 35 degrees Fahrenheit higher than the 30-Second OEI rating operating temperature limit.

(c) A separate test engine may be used for each test.

(d) Following the test, rotor assembly growth and distress beyond serviceable limits for an overtemperature condition is permitted, provided the structural integrity of the rotor assembly is maintained, as shown by a procedure that is acceptable to the Administrator.

**§ 33.93 Teardown inspection.**

In addition to the requirements of section 33.93, this special condition requires that the engine be completely disassembled after completing the additional testing of section 33.87. The engine may exhibit deterioration in excess of that permitted in section 33.93(b), and may include some engine parts and components that may be unsuitable for further use. It must be shown by procedures approved by the Administrator that the structural integrity of the engine, including mounts, cases, bearing supports, shafts and rotors, is maintained.

Issued in Burlington, Massachusetts, on July 20, 1995.

**Robert E. Guyotte,**

*Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 95–18591 Filed 7–27–95; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 906

## Colorado Regulatory Program

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Colorado regulatory program (hereinafter, the ''Colorado program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to rules pertaining to definitions; the applicability of Colorado's rules; permit application requirements for legal, financial, and related information; permit application requirements for operation and reclamation plans; requirements for special categories of mining; public participation and approval of permit applications; performance standards for revegetation; and performance standards for subsidence control. The amendment is intended to revise the Colorado program to be consistent with the corresponding Federal regulations and improve operational efficiency.

**DATES:** Written comments must be received by 4:00 p.m., m.d.t. August 28, 1995. If requested, a public hearing on the proposed amendment will be held on August 22, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on August 14, 1995.

**ADDRESSES:** Written comments should be mailed or hand delivered to James F. Fulton at the address listed below.

Copies of the Colorado program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Western Regional Coordinating Center.

James F. Fulton, Chief, Denver Field Division, Western Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3300, Denver, Colorado 80202

Colorado Division of Minerals and Geology, Department of Natural Resources, 215 Centennial Building, 1313 Sherman Street, Denver, Colorado 80203, Telephone: (303) 866–3567.

**FOR FURTHER INFORMATION CONTACT:**

James F. Fulton, Telephone: (505) 766–1486.

**SUPPLEMENTARY INFORMATION:**

### I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, **Federal Register** (45 FR 82173). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.11, 906.15, 906.16, and 906.30.

### II. Proposed Amendment

By letter dated July 12, 1995, Colorado submitted a proposed amendment to its program (administrative record No. CO–670) pursuant to SMCRA (30 U.S.C. 1201 *et seq*.). Colorado submitted the proposed amendment at its own initiative and in response to a February 7, 1990, letter (administrative record No. CO–484) that OSM sent to Colorado in accordance with 30 CFR 732.17(c). The provisions of 2 Code of Colorado Regulations 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board for Coal Mining, that Colorado proposes to revise are: Rule 1.04, definitions; Rule 1.05, applicability of Colorado's rules; Rule 2.03, permit application requirements for legal, financial, and related information; Rule 2.05, permit application requirements for operation and reclamation plans; Rule 2.06, requirements for special categories of mining; Rule 2.07, public participation and approval of permit applications; Rule 4.15, performance standards for revegetation; and Rule 4.20, performance standards for subsidence control.

Specifically, Colorado proposes to revise:

Rule 1.04(21), the definition of ''coal,'' to indicate that the referenced publication of the American Society of Testing and Materials is incorporated as it existed on the date of promulgation of these revisions;

Rule 1.04(80), the definition of ''operator,'' to replace the term ''refuse pile'' with ''mine waste disposal facility;''

Rule 1.04(92), the definition of ''person,'' to be consistent with the definition of ''person'' in the Colorado Surface Coal Mining Reclamation Act;

Rule 1.05.1(b), to remove an exemption from the Colorado program for operations which affect 2 acres or less;

Rule 2.03.3(4), to indicate that the referenced edition of ''Standard Methods for the Examination of Water and Wastewater'' is incorporated as it existed on the date of promulgation of these revisions;

Rule 2.03.7(1), permit application information concerning the relationship of a proposed permit area to areas designated as unsuitable for mining, to reference 30 CFR 769, which concerns the petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations, rather than 30 CFR 765, which does not exist;

Rule. 2.05.3(3)(c)(iv), concerning a description of measures to be taken to protect the inlet end of a ditch relief culvert, to reference Rule 4.03.1(4)(e)(vi)(C) for approval of haul road culverts;

Rule 2.05.3(8)(c), permit application information concerning the design of coal processing waste dams and embankments, to reference the performance standards at Rule 4.11.5, which are specific to dams and embankments constructed of or impounding coal mine waste, rather than the general performance standards applicable to coal mine waste at Rule 4.11;

Rule 2.05.6(2)(a)(iii)(A), to correct the citation of Colorado's statute for protection of Nongame, Endangered and Threatened Species Conservation Act;

Rule 2.06.6(2)(a)(i), to indicate that the referenced U.S.D.A. National Soils Handbook is incorporated as it existed on the date of promulgation of these revisions;

Rule 2.06.8(5)(c) (i) through (iii), to specify methods for evaluating whether a mining operation will damage the water system of an alluvial valley floor;

Rule 2.07.2, to refer to Rule 2.07 rather than Rule 2.07.2 in the title line for the statement of objectives;

Rule 4.15.1(2)(d), to correct the reference to requirements for fish and wildlife at Rule 4.18(5)(i) rather than Rule 4.18(4)(i); and

Rule 4.20.3(2) (a) through (c), to specify the performance standards for mitigation of structures or facilities that may be damaged as a result of subsidence due to underground mining operations.

## III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Colorado program.

*1. Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Western Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the administrative record.

*2. Public Hearing*

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on August 14, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

*3. Public Meeting*

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

## IV. Procedural Determinations

*1. Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*2. Executive Order 12778*

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

*3. National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (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 906**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 19, 1995.

**Richard J. Seibel,**

*Regional Director, Western Regional Coordinating Center.*

[FR Doc. 95–18550 Filed 7–27–95; 8:45 am]

BILLING CODE 4310–05–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[TN131–1–6794b; TN136–1–6795b; TN137–1–6796b; FRL–5257–6]**

### Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Basic Motor Vehicle Inspection and Maintenance Program

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve three state implementation plan (SIP) revisions submitted on March 17, July 8 and July 13, 1994, by the State of Tennessee, through the Tennessee Air Pollution Control Division. These revisions modify an existing basic vehicle inspection and maintenance (I/M) program in Davidson County as well as establishing and implementing a similar program in the four middle Tennessee counties of Rutherford, Sumner, Williamson, and Wilson. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** To be considered, comments must be received by August 28, 1995.

**ADDRESSES:** Written comments on this action should be addressed to: Dale Aspy at the EPA Regional office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

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

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

Air Pollution Control Division, Tennessee Department of Environment and Conservation, 9th Floor, L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.

Bureau of Environmental Health Services, Nashville and Davidson County Metropolitan Health Department, 311 23rd Street, North, Nashville, Tennessee 37203.

**FOR FURTHER INFORMATION CONTACT:** Dale Aspy, Mobile Source Planning Unit, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4214. Reference files TN131, TN136 and TN137.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 28, 1995.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

[FR Doc. 95–18512 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

### 40 CFR Part 52

**[KY77–1–6553b: FRL–5257–9]**

### Approval and Promulgation of Air Quality Implementation Plans; Kentucky; Basic Motor Vehicle Inspection and Maintenance Program

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the State implementation plan (SIP) revision submitted on November 12, 1993, by the Commonwealth of Kentucky, through the Kentucky Natural Resources and Environmental Protection Cabinet. This revision modifies the implementation of a basic motor vehicle inspection and maintenance (I/M) program in Jefferson County, Kentucky, which will include commuter vehicles in the program. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** To be considered, comments must be received by August 28, 1995.

**ADDRESSES:** Written comments on this action should be addressed to: Dale Aspy at the EPA regional office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

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

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

Air Pollution Control District of Jefferson County, 850 Barrett Avenue, Suite 205, Louisville, Kentucky 40204.

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 316 St. Clair Mall, Frankfort, Kentucky 40601.

**FOR FURTHER INFORMATION CONTACT:** Dale Aspy, Mobile Source Planning Unit, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4214. Reference file KY77–1–6553.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 28, 1995.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

[FR Doc. 95–18514 Filed 7–27–95; 8:45 am]

**BILLING CODE 6560–50–P**

## 40 CFR Part 52

**[DE25–1–6742b; FRL–5223–4]**

## Approval and Promulgation of Air Quality Implementation Plans; Delaware: ''Bulk Gasoline Marine Tank Vessel Loading Facilities''

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Delaware on August 26, 1994 for the purpose of establishing and requiring the control of volatile organic compound (VOC) emissions from marine vessel transfer operations. The revision pertains to Regulation 24, ''Control of VOC Emissions'', by renumbering existing Section 43, ''Other Facilities that Emit VOCs'', to Section 50, and adding a new Section 43, ''Bulk Gasoline Marine Tank Vessel Loading Facilities''. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be submitted in writing by August 28, 1995.

**ADDRESSES:** Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 597–3164, at the EPA Region III address above.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action of the same title, ''Bulk Gasoline Marine Tank Vessel Loading Facilities'', which is located in the Rules and Regulations Section of this **Federal Register**.

### List of Subjects in 40 CFR Part 52

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

**Authority:** 42 U.S.C. 7401–7671q.

Dated: April 13, 1995.

**W.T. Wisniewski,**

*Acting Regional Administrator, Region III.*

[FR Doc. 95–18516 Filed 7–27–95; 8:45 am]

**BILLING CODE 6560–50–P**

## 40 CFR Part 52

**[TN–146–1–7039b; FRL–5226–2]**

## Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to the Nashville-Davidson County Construction and Operation Permit Regulations for Minor Sources

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve revisions to the Nashville-Davidson County portion of the Tennessee State Implementation Plan (SIP) submitted by the Tennessee Department of Environment and Conservation (TDEC) on behalf of Nashville-Davidson County, for the purpose of establishing a Federally enforceable local operating permit (FELOP) program. In order to extend the Federal enforceability of the Nashville-Davidson County FELOP to hazardous air pollutants (HAP), EPA is also proposing approval of the County's FELOP regulations pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA). In the Final Rules Section of this **Federal Register**, EPA is approving the revision to the Nashville-Davidson County portion of the Tennessee SIP as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rational for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this notice should do so at this time.

**DATES:** To be considered, comments must be received by August 28, 1995.

**ADDRESSES:** Written comments should be addressed to: Gracy R. Danois, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Copies of the material submitted by Nashville-Davidson County may be examined during normal business hours at the following locations:

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

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

Tennessee Department of Environment and Conservation, Tennessee Air Pollution Control Board, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.

Metropolitan Government of Nashville and Davidson County, Metropolitan Health Department, Bureau of Environmental Health Services, 311 23rd Avenue, North, Nashville, Tennessee 37203.

**FOR FURTHER INFORMATION CONTACT:** Gracy R. Danois, Title V Program Development Team, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4

Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4150. Reference file TN–146–1–7039.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 23, 1995.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

[FR Doc. 95–18517 Filed 7–27–95; 8:45 am]

**BILLING CODE 6560–50–P**

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## 40 CFR Part 52

**[NC–062–1–6430b; NC–067–1–6633b; NC–068–1–6632b; FRL–5254–7]**

## Approval and Promulgation of Implementation Plans; North Carolina: Approval of Revisions to State of North Carolina's State Implementation Plan (SIP)

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of North Carolina, the Western North Carolina Air Pollution Control District, and the Forsyth County Department of Environmental Affairs for the purpose of allowing the State and two local agencies the ability to issue Federally enforceable state operating permit programs (FESOP) and Federally enforceable local operating permits (FELOP). In the final rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** To be considered, comments must be received by August 28, 1995.

**ADDRESSES:** Written comments should be addressed to Scott Miller of the EPA Regional office listed below.

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

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

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

North Carolina Department of Environment, Health, and Natural Resources, P.O. Box 29535, Raleigh, North Carolina 27626.

**FOR FURTHER INFORMATION CONTACT:** Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 ext. 4153.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 23, 1995.

**William A. Waldrop,**

*Acting Regional Administrator.*

[FR Doc. 95–18524 Filed 7–27–95; 8:45 am]

**BILLING CODE 6560–50–P**

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## 40 CFR Part 52

**[NC–065–1–6431b; FRL–5226–8]**

## Approval and Promulgation of Implementation Plans; North Carolina: Approval of Revisions Mecklenburg County Portion of the State of North Carolina's State Implementation Plan (SIP)

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Mecklenburg County Department of Environmental Protection through the North Carolina Department of Health, Environment, and Natural Resources (DEHNR) for the purpose of establishing a federally enforceable minor source operating permit program. In the final rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** To be considered, comments must be received by August 28, 1995.

**ADDRESSES:** Written comments should be addressed to Scott Miller of the EPA Regional office listed below.

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

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

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

North Carolina Department of Environment, Health, and Natural Resources, P.O. Box 29535, Raleigh, North Carolina 27626.

**FOR FURTHER INFORMATION CONTACT:** Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–2864.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 23, 1995.

**William A. Waldrop,**

*Acting Regional Administrator.*

[FR Doc. 95–18526 Filed 7–27–95; 8:45 am]

**BILLING CODE 6560–50–P**

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## 40 CFR Part 52

**[NV 11–1–7118; FRL–5265–3]**

## Clean Air Act Approval and Promulgation of New Source Review Implementation Plan for Clark County, NV

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The EPA proposes to approve with a contingency, and disapprove in

the alternative, a requested State Implementation Plan (SIP) revision submitted by the State of Nevada on behalf of Clark County for the purpose of meeting requirements of the Clean Air Act, as amended in 1990 (CAA or Act) with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS). The requested revision was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment new source review SIP. This submittal also satisfies the requirements for a Prevention of Significant Deterioration (PSD) program. This proposed approval is contingent upon Clark County correcting existing deficiencies in its NSR and PSD submittal before EPA promulgates a final rulemaking on this submittal. Should Clark County fail to correct all deficiencies in this submittal, then this document will serve as a proposed disapproval of the submittal.

**DATES:** Comments on this proposed action must be received in writing by August 28, 1995.

**ADDRESSES:** To submit comments or receive further information, please contact: Jennifer Fox, Environmental Engineer, New Source Section, Air & Toxics Division (A–5–1), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: (1) EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105; (2) State of Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, Capitol Complex, 333 W. Nye Lane, Carson City, Nevada 89710; (3) Clark County Health District, 625 Shadow Lane, Las Vegas, NV 89127.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Fox at (415) 744–1257.

**SUPPLEMENTARY INFORMATION:** The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Clean Air Act. EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements [see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion. EPA is currently developing a proposed rule to implement the changes under the 1990 Amendments in the new source review provisions in Parts C and D of Title I of the Act. EPA expects to propose this rule sometime during 1995. Upon promulgation of those regulations, EPA will review those NSR SIP submittals on which it has taken final action to determine whether additional SIP revisions are necessary.

## Procedural Background

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

The Clark County Health District held a public hearing on April 22, 1993 to entertain public comment on the new source review rules. On July 29, 1993, the rules were adopted by the District and submitted to the State. On November 30, 1993 the rules were submitted to EPA as a proposed revision to the Nevada SIP.

The SIP revision was not reviewed by EPA within six months to determine completeness, and was therefore deemed complete by default. The submittal has since been reviewed and found to be complete but lacking certain requirements that would make it fully approvable. Clark County has, however, expressed an interest in revising their SIP to make the required changes and has submitted draft versions of the rule which address the deficiencies described below. Therefore, contingent on the submittal of a fully approvable SIP, EPA proposes to approve the Clark County Health District's nonattainment NSR and attainment PSD SIP submittal. If the District fails to address the deficiencies before EPA's final action on this submittal (which we expect will be within 6 months), then EPA's final action will be a disapproval.

## Summary of Rule Contents

The Air Pollution Control Division of the Clark County Health District submitted to EPA for adoption into the applicable NSR SIP Rules 0 (Definitions), 12 (Preconstruction Review for New or Modified Stationary Sources), and 58 (Emission Reduction Credits). Rules 0, 12, and 58 are intended to replace existing NSR SIP Rules 1 (Definitions) and 15 (Source Registration).

These submitted rules constitute the District's new source permitting regulations. Rule 0 consists of definitions of all terms relating to new sources and modifications to existing sources of air pollution, and their regulation. Rule 12 contains new and modified source permitting requirements, including applicability, major source definitions, offsets, increment analysis, and Lowest Achievable Emission Rate/Best Available Control Technology. Rule 58 establishes procedures for the creation, banking, and use of emission reduction credits. This last rule has indirect bearing on new source review, as these credits can be obtained by new sources and used as offsets.

In Clark County, the Las Vegas Valley, Boulder City, and El Dorado Valley are currently designated as Serious nonattainment for PM–10 and Moderate nonattainment (>12.7 ppm) for CO. All other areas within the District are designated as attainment or unclassifiable with respect to the NAAQS. District nonattainment rules must therefore apply to all major new or modified stationary sources proposing to emit CO or PM–10 in the areas noted above. The nonattainment provisions must also apply to any source which would contribute to a violation of the NAAQS. The PSD provisions submitted by the District apply to certain new sources or modifications proposing to emit attainment pollutants in specified amounts.

The Clean Air Act requirements are found at sections 172 and 173 for nonattainment NSR permitting and at section 165 for PSD permitting. With certain exceptions, described below, Clark County's submittal satisfies these requirements. For a detailed description of how the submitted rule meets the applicable requirements, please refer to EPA's technical support document.

## Rule Deficiencies That Must Be Corrected

*Rule 0*

*Modification:* The definition of ''modification'' in the submitted rule differs from the federal definition. The CFR defines a modification as a change resulting in a ''net emissions increase.'' A net emissions increase is based on an increase in actual emissions for a physical or operational change, or an increase in potential emissions in the case of sources which have not yet constructed.

The submitted rule, however, defines a ''modification'' as an increase in a source's ''potential to emit.'' As a result the rule fails to require review for

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

modifications which involve a ''major'' increase in actual emissions, but no increase in potential to emit. To correct this deficiency, calculations in the District rule must be based on increases in actual emissions (and for sources which have not begun normal operations, actual emissions shall equal the potential to emit). Because the district has correctly defined ''potential to emit'' and ''actual emissions,'' this change can be made by incorporating the federal definition of ''net emissions increase'' into the District rule definition of ''modification.''

*Regulated Air Pollutant:* The definition of ''regulated air pollutant'' in the submitted rule contains a list of emissions which are ''regulated by sections containing Emission limits and by Section 12.'' The list of ''Chemical Substances Requiring BACT and Public Notification'' in Section 12.2.7, however, contains substances which are not included in the definition of ''regulated air pollutant.'' This oversight should be corrected for rule consistency.

*Volatile Organic Compound:* The definition of ''volatile organic compound'' in the submitted rule contains a list of substances exempt from regulation as VOCs which is inconsistent with the exemption list in 40 CFR 51.100(s). This discrepancy should be corrected to avoid granting VOC emission reduction credits, as well as requiring VOC offsets, for exempt compounds. The definition in the CFR should be adopted verbatim into this section.

*Rule 12*

*Public Notice:* The submitted rule does not specify that public comments regarding an air quality permit application will be considered, except in the event of a public hearing. A thirty-day public comment period should be required for each permit application, as specified by 40 CFR 51.166(q). All public comment, oral and written, received within the specified time, should be considered in making the final decision on the approvability of the permit application.

*Variance to Rule Requirements:* The submitted rule outlines the procedure by which the Board of Health may grant a variance to subsection 12.2.10.6 (which requires impact analysis for $NO_x$ sources of 100 tpy or greater). The District has explained that this variance is intended to refer to the lowered major source applicability threshold of 50 tpy for $NO_x$ sources in the Las Vegas Valley. If so, this must be clarified in the rule, so that no variance may be granted to a source required by federal standards to undergo new source review.

*Fugitive Emissions:* The submitted rule contains a definition of potential to emit which includes fugitive emissions only for sources of PM–10 in the nonattainment area. Fugitives must also be included in the major source applicability determination, defined by a source's potential to emit, for all other regulated pollutants, if the source belongs to one of the source categories listed in 40 CFR 51.165(a)(1)(iv)(C).

*Additional Impact Analysis for Attainment Pollutants:* In many cases, the submitted rule correctly requires major sources to perform an additional impact analysis, as required in 40 CFR 51.166(i) and 51.166(o). However, the rule fails to require the analysis for VOC, lead and CO in sections 12.2.5, 12.2.8, and 12.2.13, respectively. In addition, the rule fails to require the analysis for major modifications. The rule must be amended to require the additional impact analysis for pollutant subject to regulation under the Act which will be emitted by the new source or modifications.

*Alternative Siting Analysis:* The submitted rule lacks a requirement that an alternative siting analysis be performed by all permit applicants for sources located within a nonattainment area. This analysis, required by CAA 173(a)(5), would demonstrate that the benefits of a proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

*Class I Area Visibility Protection:* The submitted rule lacks the visibility protection requirements of section 169A of the CAA and described in 40 CFR 51.307. These provisions require review of major sources and modifications that may have an impact on visibility in any mandatory Class I Federal Area. This may have been overlooked, because there are currently no Class I areas in Clark County. Nonetheless, this requirement should be included in the event that such an area be designated in the future, or that a source may impact a Class I area outside of Clark County.

*PSD Ambient Air Increments:* The submitted rule lacks provisions which set the maximum allowable increases in PM–10, $SO_2$, and $NO_2$ to those increments listed in 40 CFR 51.166(c), for designated attainment or unclassifiable areas. The increments must be listed in the rule.

*Offsets:* The submitted rule states that, when required, offsets must be obtained by a source either prior to, or within thirty days of, the issuance of the Operating Permit, depending on the pollutant. Section 173 of the CAA, however, requires that offsets be federally enforceable prior to the issuance of an Authority to Construct Permit, and in effect by the time operation commences. This requirement must be changed in order to make the rule approvable.

*Additional Requirements:* The submitted rule contains no provisions which require new source review for a source or modification which becomes major due to a relaxation in a federally-enforceable limit. As described in 40 CFR 51.165(a)(5)(ii), such sources and modifications are subject to major new source review ''as though construction had not yet commenced.'' The submitted rule must add this requirement.

*Hazardous Air Pollutants:* The list of hazardous air pollutants in the submitted rule must be expanded to include those pollutants listed in 40 CFR 51.166(b)(23)(i), which are not also regulated by Section 112(b)(1) of the Act. These pollutants and their significance levels must be listed.

*Rule 58*

*RACT Adjustment:* The submitted rule lacks provisions requiring that existing and future emission reduction credits (ERCs) are surplus to Reasonably Available Control Technology (RACT) requirements at time of use. EPA interprets section 172(c)(1) of the Act to require a RACT level of reductions on ERCs as well as on all applicable sources. This ensures that all ERCs will be surplus at their time of use, since any banked credits that predate a RACT requirement will not be able to be counted as a credit toward meeting that requirement.

*Prior Shutdowns:* The submitted rule does not disallow ''prior shutdown'' credits as required in 40 CFR 51.165(a)(1)(xxv). As defined by this CFR section, prior shutdown credits are generated by facilities which apply for credit after the facility has already ceased to operate. The provision limiting shutdown credits applies either when the District attainment plan has been disapproved, or when this plan is not yet due, but a due date during the creation of this plan is missed. In this case, sources which seek ERCs due to a shutdown must do so at the time operation of the source ceases.

*Property Rights:* The submitted rule refers to procedures which allow banking of ERCs ''in a legally protected manner.'' This language suggests that banked ERCs could be protected under property rights laws, or that their adjustment or rescission could be legally contested by the owner of the ERCs. EPA cannot approve such language, and encourages the District to

add language explicitly stating that banking does not guarantee ERCs under any property rights laws.

*Mobile and Area Sources:* The submitted rule allows reductions generated by mobile and area sources to be credited as ERCs which may be used as offsets. The rule fails, however, to provide for the federal enforceability of these credits. In addition, the submitted rule lacks language detailing how these emissions are to be quantified. Both the federal *Emissions Trading Policy Statement* (ETPS, 51 FR 43814, 4 December 1986) and the *Economic Incentive Program Rules* (EIP, 58 FR 11110, 23 February 1993) contain provisions concerning this issue. Unless language is added which describes how mobile and area source reductions are to be quantified and made federally-enforceable, EPA requires that all references to area and mobile source reductions be removed.

**Proposed Action**

EPA is proposing to approve, with disapproval in the alternative, the plan revisions submitted by Clark County on November 30, 1993. Full approval as a final action on these rules is contingent upon the District making the required changes listed above.

If the specified changes are not made before EPA's final action on this submittal, then EPA's final action will be a disapproval. If finalized, this disapproval would constitute a disapproval under section 179(a)(2) of the Act (see 57 FR 13566–67). As provided under section 179(a) of the Act, Clark County would have up to 18 months after a final SIP disapproval to correct the deficiencies that are the subject of the disapproval before EPA is required to impose sanctions. If the District does not correct its SIP deficiencies within 18 months, then section 179(a)(4) requires the immediate application of sanctions. According to 179(b), sanctions can take the form of a loss of highway funds or a two to one emissions offset ratio. Once the Administrator applies one of the section 179(b) sanctions, the State will then have an additional six months to correct any deficiencies. Section 179(a)(4) requires that both highway and offsets sanctions must be applied if any deficiencies are still not corrected after the additional six month period.

EPA is requesting comments on all aspects of the requested SIP revision and EPA's proposed rulemaking action. Comments received by date indicated above will be considered in the development of EPA's final rule.

**Administrative Review**

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

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

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

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, New source review, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: July 17, 1995.

**Felicia Marcus,**

*Acting Regional Administrator.*

[FR Doc. 95–18618 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–P

**40 CFR Part 52**

**[WI–49–01–6738b; FRL–5254–5]**

## Approval and Promulgation of Implementation Plans; Wisconsin

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

**ACTION:** Proposed rule.

**SUMMARY:** The United States Environmental Protection Agency (USEPA) proposes to approve revisions to Wisconsin's State Implementation Plan (SIP) for ozone which were submitted to the USEPA on April 17, 1990, and June 30, 1994, and supplemented on July 15, 1994. Included in these revisions is a volatile organic compound (VOC) regulation which establishes reasonably available control technology (RACT) for screen printing facilities. Additionally, the State has submitted current negative declarations for pre-1990 Control Technology Guideline (CTG) categories for which Wisconsin does not have rules as well as a list of major sources affected by the 13 CTG categories that USEPA is required to issue pursuant to sections 183(a), 183(b)(3) and 183(b)(4) of the Clean Air Act (Act). These revisions were submitted to address, in part, the requirement of section 182(b)(2)(B) of the Act that States adopt RACT regulations for sources covered by pre-1990 CTG documents, and the requirement of section 182(b)(2)(C) of the Act that States revise their SIPs to establish RACT regulations for major sources of VOCs for which the USEPA has not issued a CTG 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, thedirect 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 notice should do so at this time.

**DATES:** Comments on this proposed rule must be received on or before August 28, 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: June 20, 1995.

**David A. Ullrich,**

*Acting Regional Administrator.*

[FR Doc. 95–18522 Filed 7–27–95; 8:45 am]

**BILLING CODE 6560–50–P**

## 40 CFR Part 81

**[UT22–1–6925b; FRL–5265–6]**

## Designation of Area for Air Quality Planning Purposes; Utah; Designation of Ogden City $PM_{10}$ Nonattainment Area

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

**ACTION:** Proposed rule.

**SUMMARY:** In this document, EPA is proposing to revise the $PM_{10}$ (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) National Ambient Air Quality Standards (NAAQS) designation for a portion of Weber County, Utah. Previously, consistent with section 107(d)(3)(A) of the Act, EPA notified the Governor of Utah that Weber County, Utah should be redesignated from unclassifiable to nonattainment for $PM_{10}$. The redesignation is based upon violations of the $PM_{10}$ NAAQS which were monitored between January 1991 and January 1993.

In the final rules section of this **Federal Register**, EPA is revising the designation of a portion of Weber County, Utah as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed rule must be received in writing by August 28, 1995.

**ADDRESSES:** All written comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch, EPA Region VIII, at the address listed below. Information supporting this action can be found at the following location: EPA Region VIII, Air Programs Branch, 999 18th Street, 3rd Floor, South Terrace, Denver, Colorado 80202–2466. The information may be inspected between 8 a.m. and 4 p.m., on weekdays, except for legal holidays. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Lee Hanley, Air Programs Branch, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 293–1760.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule which is located in the Rules Section of the **Federal Register**.

Dated: July 19, 1995.

**Jack W. McGraw,**

*Acting Regional Administrator.*

[FR Doc. 95–18519 Filed 7–27–95; 8:45 am]

**BILLING CODE 6560–50–P**

## 40 CFR Part 185

**[OPP–300394; FRL–4969–9]**

**RIN 2070–AC18**

## Trifluralin; Revocation of Food Additive Tolerances

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to revoke tolerances for residues of the herbicide trifluralin in or on peppermint oil and spearmint oil, and to withdraw a prior final rule revoking those tolerances. EPA is taking this action because peppermint oil and spearmint oil are not ready-to-eat commodities, and residues of trifluralin are not likely to concentrate in ready-to-eat forms of peppermint and spearmint oil. Therefore, food additive tolerances are not required. In addition, after the tolerances are revoked pursuant to this action, the basis for the prior revocation will be eliminated.

**DATES:** Written comments, identified by the document control number [OPP-300394], must be received on or before August 28, 1995.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP-300394]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

**FOR FURTHER INFORMATION CONTACT:** By mail: Jean M. Frane, Policy and Special Projects Staff (7501C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Crystal Mall #2, Rm. 1113, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-5944; e-mail: frane.jean@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

EPA is proposing two separate actions in this document. First, EPA proposes to revoke the food additive regulations (FARs) for residues of the herbicide trifluralin in or on peppermint oil and spearmint oil (40 CFR 185.5900). Second, EPA proposes to withdraw its Order dated July 14, 1993 (58 FR 37862) to the extent that it revoked the food additive regulations for trifluralin in or on peppermint oil and spearmint oil.

### *A. Statutory Background*

The Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., authorizes the establishment by regulation of maximum permissible levels of pesticides in foods. Such regulations are commonly referred to as ''tolerances.'' Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is ''adulterated'' under section 402 of the FFDCA and may not be legally moved in interstate commerce. 21 U.S.C. 331, 342. EPA was authorized to establish pesticide tolerances under Reorganization Plan No. 3 of 1970. 5 U.S.C. App. at 1343 (1988). Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA). EPA can establish a tolerance in response to a petition (FFDCA 408(d)(1), 409(b)(1)), or on its own initiative (FFDCA 408(e), 409(d)).

The FFDCA has separate provisions for tolerances for pesticide residues on raw agricultural commodities (RACs) and tolerances on processed food. For pesticide residues in or on RACs, EPA establishes tolerances, or exemptions from tolerances when appropriate, under section 408 of the act. 21 U.S.C. 346a. EPA regulates pesticide residues in processed foods under section 409, which pertains to ''food additives.'' 21 U.S.C. 348. Maximum residue regulations established under section 409 are commonly referred to as food additive regulations (hereinafter referred to as ''FARs''). Section 409 FARs are needed, however, only for certain pesticide residues in processed food. Under section 402(a)(2) of the FFDCA, a pesticide residue in processed food generally will not render the food adulterated if the residue results from application of the pesticide to a RAC and the residue in the processed food when ready to eat is below the RAC tolerance. This exemption in section 402(a)(2) is commonly referred to as the ''flow-through'' provision because it allows the section 408 raw food tolerance to flow through to the processed food forms. Thus, a section 409 food additive regulation is only necessary to prevent foods from being deemed adulterated when the concentration of the pesticide residue in a processed food when ready to eat is greater than the tolerance prescribed for the RAC, or if the processed food itself is treated or comes in contact with a pesticide.

### *B. Regulatory Background*

On July 14, 1993, EPA issued a final order, subject to objections and requests for a hearing, revoking the trifluralin FARs for peppermint oil and spearmint oil (58 FR 37862, hereinafter referred to as ''1993 Order''). This Order was issued in response to the decision by the U.S. Court of Appeals, Ninth Circuit, in the case of *Les v. Reilly*, 968 F.2d 985 (9th Cir. 1992), cert. denied, 113 S.Ct. 1361 (1993). DowElanco, the manufacturer of trifluralin, filed objections to the revised Order, as well as requests for a hearing on and a stay of, the revocation Order. On June 30, 1994, EPA issued a final order denying DowElanco's objections and requests for a hearing and a stay of the revocation (59 FR 33684, hereinafter referred to as ''1994 Order''). On July 14, 1994, DowElanco filed an action in the U.S. Court of Appeals, D.C. Circuit for review of EPA's 1993 Order, and moved for summary reversal or, in the alternative, an emergency stay of the revocation. *E.I. DuPont DeNemours and Co., et al. v. EPA*, Civ. Action No. 94-1504 (D.C. Cir.). On August 24, 1994, the Court denied DowElanco's motion for summary reversal, but issued an emergency stay of the revocation. In the **Federal Register** of September 12, 1994 (59 FR 46768), EPA reinstated the FARs for trifluralin (as well as for the other pesticides involved in the litigation), and they are currently in effect.

On September 11, 1992, the National Food Processors Association (NFPA) and other organizations filed a petition with EPA challenging, among other things, EPA's interpretation of the phrase ''ready to eat'' in the Delaney Clause. (Petition to the Environmental Protection Agency, Office of Pesticide Programs, Concerning EPA's Pesticide Concentration Policy (1992)) (hereinafter cited as ''NFPA petition''). The petition requested that EPA apply the term ''ready to eat'' in the flow-through provision according to what NFPA asserts is its plain meaning. EPA sought public comment on the petition (**Federal Register** of Feb. 5, 1993 (58 FR 7470)). In the **Federal Register** of June 14, 1995 (60 FR 31300), EPA issued a partial response to the NFPA petition, addressing the ''ready to eat'' policy. In that response, EPA agreed that the term ''ready to eat'' food has a common-sense meaning of food which is consumed without further preparation and stated its intention to apply that interpretation in future actions.

## II. Revocation of the Food Additive Regulations for Trifluralin in Peppermint Oil and Spearmint Oil

EPA has reviewed the trifluralin FARs for peppermint oil and spearmint oil. EPA has determined that no section 409 tolerance is necessary for mint oils because they are not ''ready to eat'' processed foods, and because ready to eat foods containing mint oils are unlikely to have trifluralin residues greater than the RAC tolerances for peppermint hay and spearmint hay.

As noted above, under FFDCA section 402(a)(2), processed foods containing pesticide residues are not deemed adulterated if the level of pesticide residues in the processed food ''when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.'' EPA believes that the common-sense meaning of the term ''ready to eat'' food is food ready for consumption without further preparation. Mint oils are not consumed ''as is'' but are used as a flavoring in other foods. As such, peppermint oil and spearmint oil are not ''ready to eat.''

Mint oils are used as flavoring agents in foods such as beverages, ice cream, candy and chewing gum. The maximum amounts used are listed in a February 1965 article in *Food Technology* (''Recent Progress in the Consideration of Flavoring Ingredients Under the Food Additives Amendment, III. GRAS Substances,'' Richard L. Hall and Bernard L. Oser). The highest concentrations of peppermint oil and spearmint oil in foods are in chewing gum at 8,300 ppm and 6,200 ppm, respectively. These equate to dilution factors of 120 and 160, respectively. Using these dilution factors and the mint oil tolerances of 2 ppm or the maximum levels observed from a 1 x rate (i.e., about 1.2 ppm), maximum residues of trifluralin in the ready-to-eat food will be on the order of 0.010 to 0.02 ppm. These are lower than the RAC tolerances of 0.05 ppm. Thus, no section 409 tolerances are needed for peppermint oil and spearmint oil, and EPA proposes to revoke the existing food additive regulations.

## III. Withdrawal of the July 14, 1993 Order With Respect to Trifluralin

EPA proposes to withdraw those aspects of EPA's July 1993 Order and EPA's June 1994 Order revoking the

trifluralin peppermint and spearmint oil FARs on grounds that trifluralin ''induces cancer'' within the meaning of the Delaney clause. As EPA states in this proposal, the trifluralin peppermint and spearmint oil FARs are no longer necessary. Ideally, EPA would prefer to have reached the conclusions announced in this proposal with respect to trifluralin residues in mint oils sooner. However, EPA has only recently been able to complete and release its revised policy interpreting the phrase ''ready to eat,'' a reinterpretation that provides alternative grounds for revoking the trifluralin mint FARs. EPA had an obligation in 1993 to respond promptly to the Ninth Circuit's order in *Les v. Reilly*. Moreover, EPA did not believe it would be appropriate to delay its response to the *Les* Court's order until it had vetted the many issues raised in NFPA's petition, a petition that was filed many years after the petition that was the subject of *Les*.

Given that other, less controversial grounds for revoking these FARs have recently become available, EPA is taking this opportunity to revoke the FARs on these grounds. EPA believes that there is no need to continue to litigate the legality of its 1993 and 1994 Orders relating to trifluralin where there are less controversial grounds available to achieve the revocation of the mint FARs. Therefore, EPA will inform the Court in *DuPont v. EPA* that it is proposing these revocations.

If EPA receives no adverse comments on its notice proposing the revocation of the trifluralin mint FARs on alternative grounds, EPA will issue a final order revoking the FARs. EPA will also request that the D.C. Circuit Court remand the 1993 and 1994 Orders with respect to trifluralin so that EPA may likewise issue a final order withdrawing the trifluralin-related aspects of those Orders.

## IV. Procedural Matters

### *A. Comments*

Interested persons may comment on the following: EPA's determination that peppermint oil and spearmint oil are not ready to eat commodities; and EPA's proposal to withdraw the 1993 Order with respect to revocation of the trifluralin FARs.

If EPA receives no adverse comments on the revocation of the FARs for trifluralin in mint oils, it will issue a final order, effective upon publication, subject to objections and requests for a hearing. If a party does not submit comments on this proposal, EPA believes that it would be appropriate to deny objections or a request for a hearing from that party.

Written comments must bear a notation indicating the document control number, [OPP-300394]. All written comments filed in response to this notice will be available for public inspection in Rm. 1132 at the address given above from 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [OPP-300394] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

## V. Regulatory Requirements

### *A. Executive Order 12866*

Under Executive Order 12866, 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 the order, a ''significant regulatory action'' is an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, and the environment, public health or safety, of State, local, or tribal governments or communities''; (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this proposed rule is not a ''significant'' action under E.O. 12866. EPA is taking this action because it has determined that the food additive regulation for trifluralin is not needed. Therefore, the Agency expects that no economic impact will result.

### *B. Regulatory Flexibility Act*

The proposed regulatory action has been reviewed under the Regulatory Flexibility Act of 1980, and, as stated above, EPA expects that it will not have any economic impacts, including impacts on small entities.

### *C. Paperwork Reduction Act*

This proposal does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

### List of Subjects in 40 CFR Part 185

Environmental protection, Administrative practice and procedures, Agricultural commodities, Food additives, Pesticides and pests, Records and recordkeeping.

Dated: July 24, 1995.

**Lynn R. Goldman,**

*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore, it is proposed that 40 CFR part 185 be amended as follows:

## PART 185—[AMENDED]

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

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

### § 185.5900 [Removed]

2. By removing § 185.5900 *Trifluralin*.

[FR Doc. 95–18621 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–F

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### 41 CFR Part 51–5

### Mandatory Source Requirement

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule revises the Committee's mandatory source requirement regulation to permit sales of Javits-Wagner-O'Day (JWOD) products to the Government through commercial distributors as well as the Committee's traditional sources of supply.

**DATES:** Comments must be submitted on or before September 26, 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:** G. John Heyer, (703) 603–7740. Copies of this notice will be made available on request in computer diskette format.

**SUPPLEMENTARY INFORMATION:** Entities of the Government desiring to buy commodities and services which are on the Committee's Procurement List are required by law (41 U.S.C. 48) to buy them from a qualified nonprofit agency designated by the Committee at the fair market price established by the Committee, in accordance with the Committee's rules and regulations. The Committee has traditionally interpreted this statutory mandate as requiring a direct buying relationship between a Government entity and a nonprofit agency. The Committee's mandatory source requirement regulation, 41 CFR 51–5.2, is based on this interpretation.

In light of ongoing changes in Federal procurement, the Committee has reexamined its traditional interpretation of its statute and has concluded that the regulatory authority it has been granted allows it to prescribe by regulation that its products may be procured through commercial distributors. As Government distributors such as the General Services Administration and the Defense Logistics Agency have long been providing these products to Government agencies, the Committee does not believe that this new interpretation is a departure from the statutory scheme which Congress established for the Committee to create jobs for people who are blind or have other severe disabilities by requiring Government agencies to purchase commodities and services from nonprofit agencies which employ these people.

The current version of the mandatory source requirement regulation mentions the Department of Veterans Affairs (VA) as one of the Government central supply agencies which distribute commodities produced by the JWOD Program. Because VA has closed its depot system, a specific reference to VA does not appear in the proposed regulation. The proposed regulation retains the requirement that persons providing commodities to Government agencies by contract are required to order them from the same Committee-authorized sources the Government agencies would use if they bought the commodities directly.

### Regulatory Flexibility Act

I certify that this proposed revision of the Committee regulations will not have a significant economic impact on a substantial number of small entities because the revision clarifies program policies and does not essentially change the impact of the regulations on small entities.

### Paperwork Reduction Act

The Paperwork Reduction Act does not apply to this proposed rule because it contains no information collection or recordkeeping requirements as defined in that Act and its regulations.

### Executive Order No. 12866

The Committee has been exempted from the regulatory review requirements of the Executive Order by the Office of Information and Regulatory Affairs. Additionally, the proposed rule is not a significant regulatory action as defined in the Executive Order.

### List of Subjects in 41 CFR Part 51–5

Government procurement, Handicapped.

For the reasons set out in the preamble, Part 51–5 of Title 41, Chapter 51 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 51–5—CONTRACTING REQUIREMENTS

1. The authority citation for Part 51–5 continues to read as follows:

**Authority:** 41 U.S.C. 46–48c.

2. Section 51–5.2 is amended by revising paragraphs (b) and (c), removing paragraphs (d) and (e), and redesignating paragraph (f) as paragraph (d), to read as follows:

**§ 51–5.2 Mandatory source requirement.**

* * * * *

(b) Purchases of commodities on the Procurement List by entities of the Government shall be made from sources authorized by the Committee. These sources may include nonprofit agencies, central nonprofit agencies, Government central supply agencies such as the Defense Logistics Agency and the General Services Administration, and certain commercial distributors. Identification of the authorized sources for a particular commodity may be obtained from the central nonprofit agencies at the addresses noted in § 51–6.2 of this chapter.

(c) Contracting activities shall require other persons providing commodities which are on the Procurement List to entities of the Government by contract to order these commodities from the sources authorized by the Committee.

* * * * *

Dated: July 25, 1995.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 95–18577 Filed 7–27–95; 8:45 am]

**BILLING CODE 6820–33–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 92–245; RM–8026]**

### Radio Broadcasting Services; Frederiksted, VI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal of.

**SUMMARY:** The Commission dismisses the petition for rule making filed by Jose J. Arzuaga, proposing the allotment of Channel 298A at Frederiksted, Virgin Islands, as its second local FM transmission service. *See* 57 FR 54543 November 19, 1992. The petitioner has abandoned its interest in a Class A allotment at Frederiksted, and there are no other timely expressions of interest for the channel. With this action, this proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket No. 92–245, adopted July 14, 1995, and released July 25, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, 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.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Andrew J. Rhodes,**

*Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95–18563 Filed 7–27–95; 8:45 am]

BILLING CODE 6712–01–F

## 47 CFR Part 73

**[MM Docket No. 95–123, RM–8669]**

## Radio Broadcasting Services; Winona, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by OARA, Inc. proposing the allotment of Channel 274A to Winona, Texas, as the community's first local aural transmission service. Channel 274A can be allotted to Winona in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 274A at Winona are 32–29–22 and 95–10–01.

**DATES:** Comments must be filed on or before September 15, 1995, and reply comments on or before October 2, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ann Bavender, Fletcher, Heald & Hildreth, 1300 N. 17th Street, 11th Floor, Rosslyn, Virginia 22209 (Counsel for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–123, adopted July 18, 1995, and released July 25, 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 contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Andrew J. Rhodes,**

*Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95–18565 Filed 7–27–95; 8:45 am]

BILLING CODE 6712–01–F

## 47 CFR Part 73

**[MM Docket No. 95–121, RM–8660]**

## Radio Broadcasting Services; Dearing, KS

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by William Bruce Wachter, proposing the allotment of Channel 251A to Dearing, Kansas, as the community's first local aural transmission service. Channel 251A can be allotted to Dearing in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 251A at Dearing are 37–03–31 and 95–42–47.

**DATES:** Comments must be filed on or before September 15, 1995, and reply comments on or before October 2, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lauren A. Colby, 10 E. Fourth Street, P.O. Box 113, Frederick, Maryland 21705–0113 (Counsel for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–121, adopted July 18, 1995, and released July 25, 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 contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Andrew J. Rhodes,**

*Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95–18561 Filed 7–27–95; 8:45 am]

BILLING CODE 6712–01–F

# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 630 and 678

**[Docket No. 950713178–5178–01; I.D. 062695D]**

**RIN 0648–AI10**

## Options for Establishing an Interim Permit Moratorium and Eligibility Criteria for the Atlantic Swordfish and Shark Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Advance Notice of Proposed Rulemaking (ANPR); request for comments.

**SUMMARY:** NMFS is considering a temporary moratorium on the issuance of permits for the Atlantic swordfish

and shark fisheries. NMFS announces the availability of a Concept Paper entitled ''Towards Rationalization of Fisheries for Highly Migratory Species'' and two Supplemental Papers outlining options for a permit moratorium in the Atlantic Swordfish and Atlantic shark fisheries, respectively. The options discussed are not all-inclusive; suggestions for alternative approaches are encouraged.

**DATES:** Written comments on this ANPR must be received on or before August 28, 1995.

**ADDRESSES:** Requests for copies of the Concept Paper, the Atlantic Swordfish Supplement, and the Atlantic Shark Supplement should be addressed to Richard B. Stone, Chief, Highly Migratory Species Management Division (F/CM4), National Marine Fisheries Service, 1315 East/West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Pamela Mace, 301-713-2347.

**SUPPLEMENTARY INFORMATION:** Historically, the Atlantic swordfish and shark fisheries have operated under open access. On August 30, 1991, a notice of control date for entry into the Atlantic swordfish fishery was published in the **Federal Register** (56 FR 42982). On February 22, 1994, a notice of control date for entry into the Atlantic shark fishery was published in the **Federal Register** (59 FR 8457). These notices announced that anyone entering the fishery after the control date may not be assured of future access to the fishery, if some form of limited access were implemented later. The purpose of the notices was to promote awareness of potential eligibility criteria for access to the fishery and to discourage speculative entry into the fishery. It was noted that the Secretary of Commerce could subsequently choose a different control date or choose not to use a control date. Regardless, the control date was not effective in discouraging speculative entry into the fishery. The number of swordfish vessels permitted has since increased significantly, from about 750 vessels in 1991 to 1,044 vessels in 1993 and 1,134 in 1994. Similarly, the number of shark permits increased from 1,706 in 1993 to 2,026 in 1994.

Several factors may have contributed to the increases since the published control dates. The recent trend toward limited or controlled access in many fisheries has probably prompted many fishermen to attempt to establish a ''history'' (by obtaining a permit) in as many fisheries as possible, either for speculative purposes or to maintain flexibility to participate in alternative fisheries. Another consequence of implementing limited access is that the excess fleet capacity from limited access fisheries tends to spill over into the remaining open access fisheries. Also, in the NMFS Southeast Region, which has permitting responsibility for Atlantic swordfish and shark, permit application procedures changed in 1992. Prior to 1992, separate applications were required for each fishery; in 1992, a combined application listing all Southeast-permitted fisheries was implemented. This made it far easier for fishermen to apply for multiple permits, particularly since there was little additional cost involved. Finally, new permit requirements for other fisheries in recent years (e.g., snapper-grouper) exposed many fishermen to the combined application form for the first time, increasing the probability that multiple permits, including swordfish and sharks, would be requested.

Regardless of the causes, it is evident that there is an excessive number of permitted vessels in both the swordfish and shark fisheries, because the numbers of permitted vessels in the fisheries have consistently been far greater than the number of vessels actively participating in the fisheries and reporting landings of swordfish or sharks.

### Swordfish

The Fishery Management Plan for Atlantic Swordfish was implemented on September 18, 1985, and included a requirement for vessel permits beginning January 1, 1986. However, to date, there have been no eligibility requirements for obtaining a swordfish permit (e.g., earned income requirement). During 1986–91, the number of vessels permitted in the fishery fluctuated between approximately 500 and 750 vessels. Subsequently, the number of permits has increased to 1,134 by 1994.

To comply with the 1990 recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) regarding Atlantic swordfish, NMFS implemented management measures including quotas and a minimum size limit on June 12, 1991 (56 FR 26934). The total allowable catch (TAC) was initially set at 6.9 million lb dressed weight (3,129.8 mt) and was subsequently increased to 7.56 million lb dressed weight (3,429.2 mt) on August 4, 1992 (57 FR 34264).

Although the TAC has not been reached since 1991, this situation could reverse dramatically in 1995 (there are already projections indicating that, at the present catch rate, the 1995 quota will be taken by mid-October). Beginning in 1989–90, some of the most productive vessels in the Atlantic fishery began shifting operations to the Pacific; however, recently some have returned to the Atlantic. Most of these vessels have maintained their ''participation'' in the Atlantic fleet by continuing to obtain a swordfish permit each year. If additional vessels return, landings would reach TAC levels even earlier, compounding problems associated with derby fisheries, such as the race for the fish and early closures of the fishery.

Perhaps more important, the large and increasing number of inactive, permitted vessels represents substantial potential for increases in fishing effort and overcapitalization. If appreciable numbers of these vessels become active in the fishery, for example due to declining opportunities in other fisheries, the TAC could be caught much sooner, resulting in much shortened fishing seasons for all and significant economic impact on those in the fishery.

Finally, all of these factors relating to excessive harvesting capacity are compounded by the need for additional future reductions in TAC to achieve stock rebuilding. The most recent stock assessment (1994) was more pessimistic than the previous (1992) assessment. The analyses indicate that the stock biomass continues to decline and that substantial reductions in quota are necessary in the immediate future to rebuild the stock to levels that can support the maximum sustainable yield. Based on the assessment results, ICCAT has recommended further reductions in allowable harvest levels.

The 1994 ICCAT recommendation for North Atlantic swordfish included a recommended 1995 U.S. quota of 6.56 million lb dressed weight (3,970 mt) and a 1996 quota of 5.79 million lb dressed weight (3,500 mt). These levels represent reductions of about 13 percent and 23 percent, respectively, from the current TAC. Such reductions contribute to the ''race for the quota'' and underscore the importance of addressing controlled access to the fishery.

### Sharks

Historically, the Atlantic shark fishery has operated under open access. The Fishery Management Plan for Sharks of the Atlantic Ocean (shark FMP) was implemented on April 26, 1993, and included a requirement for vessel permits. There are also eligibility requirements for obtaining a shark permit (e.g., an earned income requirement). Many of the issues in the

shark fisheries are similar to the issues mentioned above for the swordfish fisheries. During 1993–1995, the number of vessels permitted in the fishery has fluctuated between approximately 1,700 and 2,100 vessels. There are far more permitted vessels in the fishery than are necessary or probably desirable to harvest the available TAC. In April 1993, quotas were established to rebuild the stock. The entire 1993 TAC was harvested by approximately 250 vessels yet there were 1,706 vessels permitted in the fishery in 1993.

All of the factors relating to excessive harvesting capacity in the shark fisheries could be compounded by the potential need for additional reductions in TAC to achieve stock rebuilding. The most recent shark evaluation workshop (1994) and status update (1995) have been more pessimistic than earlier analyses summarized in the shark FMP. The analyses indicate that the biomass of large coastal sharks has declined substantially and does not appear to be recovering. Reductions in quota may be necessary in the immediate future to rebuild the stock to levels that can support the maximum sustainable yield. Based on the assessment results and comments from the Shark Operations Team, NMFS is considering further reductions in allowable harvest levels. Such reductions would compound factors contributing to the ''race for the quota'' and underscore the importance of addressing controlled access to the fishery.

**Request for Comments**

NMFS announces the availability of a Concept Paper entitled ''Towards Rationalization of Fisheries for Highly Migratory Species'' and two Supplemental Papers outlining options for a permit moratorium in the Atlantic swordfish and Atlantic shark fisheries, respectively. NMFS is particularly interested in receiving comments about eligibility criteria for participation in the fisheries for the duration of each permit moratorium, and the conditions under which the moratorium will operate. The options discussed are not all-inclusive; suggestions for alternative approaches are encouraged. After consideration of the comments, NMFS will decide whether to develop a moratorium for either or both fisheries, and will propose alternative features for each moratorium if adopted. Any moratorium would be implemented through rulemaking (a proposed rule and a final rule).

**Authority:** 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

Dated: July 19, 1995.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

[FR Doc. 95–18208 Filed 7–27–95; 8:45 am]

BILLING CODE 3510–22–F

# Notices

Federal Register
Vol. 60, No. 145
Friday, July 28, 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

### Agricultural Marketing Service

**[Docket Number FV–95–304]**

### Advisory Committee for Fresh Products Shipping Point Inspection Program

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Notice of public meetings.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended, the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS) announces three forthcoming meetings of the Advisory Committee for the Fresh Products Shipping Point Inspection Program.

**DATES:** August 10, 1995, at 9:00 a.m. through August 11, 1995. August 30, 1995, at 9:00 a.m. through August 31, 1995. September 14, 1995, at 9:00 a.m. through September 15, 1995.

**ADDRESSES:** U.S. Department of Agriculture, South Building, 14th and Independence Avenue, S.W., Agricultural Marketing Service Conference Room 3501, Washington, D.C. 20250. Telephone: (202) 690–0262.

**FOR FURTHER INFORMATION CONTACT:** Eric Forman, Deputy Director, U.S. Department of Agriculture, Agricultural Marketing Service, Fruit and Vegetable Division, P.O. Box 96456, Room 2085 South Building, Washington, D.C. 20090–6456. Telephone: (202) 690–0262.

**SUPPLEMENTARY INFORMATION:** The Advisory Committee for the Fresh Products Shipping Point Inspection Program includes five representatives from State cooperators and fifteen representatives from the fruit and vegetable industry. The purpose of the meetings are to review the Fresh Products Branch Shipping Point Inspection Program and confer with Department officials regarding its administration, operations, and funding. The exchange of views and information between industry, State representatives, and the Department should result in improved understanding of the cooperative agreements and their effective and efficient administration.

The meetings are open to the interested public, but space is limited. Persons wishing to attend should notify the Vice-Chairman at least one day in advance. Any member of the public may file a written statement with the Committee before, during, or after the meeting. Minutes of each meeting will be available on request.

Dated: July 24, 1995.

**Lon Hatamiya,**

*Administrator.*

[FR Doc. 95–18623 Filed 7–27–95; 8:45 am]

**BILLING CODE 3410–02–P**

### Animal and Plant Health Inspection Service

**[Docket No. 95–056–1]**

### Addition of Two Genetically Engineered Tomato Lines to Determination of Nonregulated Status for Calgene, Inc.

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

**ACTION:** Notice.

**SUMMARY:** The Animal and Plant Health Inspection Service is announcing that it has added two genetically engineered tomato lines to those subject to its October 19, 1992, interpretive ruling that certain FLAVR SAVR™ lines need no longer be regulated. The effect of this action is that two additional delayed-softening tomato lines, which have been modified by the incorporation of genetic material described by Calgene, Inc., in its initial request for an interpretive ruling, will no longer be subject to regulation under 7 CFR part 340.

**FOR FURTHER INFORMATION CONTACT:** Dr. Subhash Gupta, Biotechnologist, Biotechnology Permits, BBEP, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–8761.

**SUPPLEMENTARY INFORMATION:** On October 19, 1992, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (57 FR 47608–47616, Docket No. 92–087–2) a notice announcing the issuance of an interpretive ruling that previously field tested lines of the Calgene, Inc., FLAVR SAVR™ tomato do not present a plant pest risk and are not regulated articles under the regulations contained in 7 CFR part 340. That action was in response to a petition submitted by Calgene seeking a determination from APHIS that its FLAVR SAVR™ tomato no longer be deemed a regulated article, based on an absence of plant pest risk. The effect of that action was that previously field tested lines of the FLAVR SAVR™ tomato and their progeny would no longer be regulated under the regulations in 7 CFR part 340.

FLAVR SAVR™ tomatoes were defined by Calgene in its initial petition to include any tomatoes transformed with one of seven identified plasmid vectors that all carry an antisense copy of the tomato polygalacturonase gene and a bacterial neomycin phosphotransferase gene with associated regulatory sequences. Calgene's initial request to APHIS in 1992 was for a determination pertaining to all FLAVR SAVR™ transformants produced in tomato using any one of the seven plasmid vectors. Calgene indicated in its petition that data provided to APHIS were representative of the data gathered for all lines tested up to that time. The initial determination announced by APHIS on October 19, 1992, only applied to those lines that had already been field tested. However, APHIS indicated that new lines were likely to exhibit properties similar to those of lines already field tested under permit. The determination also allowed for cross-breeding of the identified FLAVR SAVR™ tomato lines with any other lines or cultivars of tomato without a permit. Since the publication of the October 19, 1992, determination, a total of 30 FLAVR SAVR™ tomato lines have been added to the original determination; those additions were announced in notices published in the **Federal Register** on October 3, 1994 (59 FR 50220, Docket No. 94–096–1); November 18, 1994 (59 FR 59746, Docket No. 94–125–1); and March 23, 1995 (60 FR 15284, Docket No. 95–015–1).

The FLAVR SAVR™ tomato lines that are the subject of this notice, designated 519a 4109a–4645 and 540a 4109a–1823, were constructed using the plasmid pCGN4109, which contains the promoter/terminator from either pCGN1557 or pCGN1578. These latter

two vectors were among the seven included in Calgene's initial petition to APHIS. FLAVR SAVR™ tomato lines constructed using these vectors were not included in our October 19, 1992, determination because they had not yet been field tested. These lines have since been field tested in accordance with APHIS' regulations in 7 CFR part 340, and data provided to APHIS indicate that the new transformants, produced in a manner identical to the earlier transformant lines, behave similarly to those earlier FLAVR SAVR™ tomato lines to which the original determination applied. Reports from field trials and other data indicate that the new tomato lines grow normally, exhibit the expected morphological, reproductive, and physiological properties, and do not have unexpected pest or disease susceptibility or symptoms. Therefore, the APHIS determination of October 19, 1992, of nonregulated status of previously tested FLAVR SAVR™ tomato lines applies as well to the new transformed lines.

Done in Washington, DC, this 18th day of July 1995.

**Terry L. Medley,**

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

[FR Doc. 95–18572 Filed 7–27–95; 8:45 am]

BILLING CODE 3410–34–P

## Forest Service

## Salmon River Corridor Management Project, Sawtooth National Recreation Area, Sawtooth National Forest, Custer County, Idaho

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare environmental impact statement.

**SUMMARY:** The Forest Service will prepare an environmental impact statement to disclose the effects of proposed management direction for use and facilities on the upper main Salmon River corridor, located in Custer County, Idaho.

The project area involves approximately thirty miles of the upper main Salmon River. The project area starts south of the community of Stanley, Idaho, at the Sawtooth Fish Hatchery and continues to the eastern boundary of the Sawtooth National Recreation Area (SNRA). The north and south boundaries of the project area generally parallel the river, approximately ¼ mile from the water's edge. A few exceptions to this width occur in the canyon in areas of flatter topography, where the project area widens to the toe of the slope.

**DATES:** The agency expects to file the DEIS with the Environmental Protection Agency and make it available for public comment in October 1995. The agency expects to file the final EIS in December, 1995.

**FOR FURTHER INFORMATION CONTACT:** For additional information contact Salli Rinella, project coordinator at the Sawtooth National Recreation Area, Star Route, Ketchum, ID 83340, (208) 727–5000.

**SUPPLEMENTARY INFORMATION:**

### Background

The Salmon River corridor, with its outstanding natural features is eligible as a ''recreation river'' within the National Wild and Scenic River System. Currently there is no capacity identified for recreation use. Although this narrow corridor contains less than two percent of the SNRA's total land base, it currently receives almost 15 percent of the entire recreation use for the area. It is expected that demand for recreation opportunity will continue to increase. There is a need to identify and manage for a recreation capacity that is compatible with the natural resources in the area.

There are currently eight developed campground facilities within the project area, with capacity of 131 camping units. Some of the developed facilities are outdated and in need of repair. Most of the existing campground spurs and turn-around areas were not designed for today's larger vehicles. Many sites and most of the existing toilets within the project area are not designed to provide a barrier-free opportunity as required by the Americans with Disabilities Act. Some of the developed sites lie within riparian areas. The use that is occurring within the areas and some of the facilities themselves are causing resource impacts.

Disperse camping is allowed anywhere on the SNRA except in developed campgrounds or in areas signed ''No Camping Allowed''. Many of the dispersed campsites are impacting riparian areas and streambank stability. Vehicular movement for dispersed camping also is causing loss of vegetation and possible soil compaction.

In the past, Idaho Fish and Game has fed wintering elk in emergency situations within the corridor. Elk wander onto the highway creating safety hazards to motorists. Additional safety problems occur as visitors traveling along the highway slow down or stop along the highway to view the wildlife. Large concentrations of elk have also caused vegetation loss and soil compaction at the emergency feed sites.

Past Biological Opinions from consultation with National Marine Fisheries Service (NMFS) indicates that river-oriented activities may effect the threatened Snake River spring/summer chinook salmon. Activities may also be limiting the habitats of threatened, endangered or sensitive fish, wildlife and plant species.

On August 22, 1972 Congress passed Public Law 92–400 establishing the SNRA. The intent of establishing the SNRA was to protect the areas primary values of natural beauty, fish and wildlife resources, pastoral and historical values, and recreation attributes.

There is a need to identify a river capacity level to ensure the area's primary values are protected and a need to update existing facilities to reduce impacts and accommodate today's user needs. There is also a need to address elk feeding in the corridor to reduce impacts and address safety.

### Proposed Action

The Sawtooth National Forest proposes to develop FLRMP standards and guidelines identifying limits of acceptable change that will determine when carrying capacity for recreation activities on the upper main Salmon River have been met, and to prohibit surfing on this section of the river.

The Forest also proposes to issue six five-year special use outfitter-guide floatboating permits, one five-year year-round special use fishing permit, four five-year special use walk and wade fishing permits, and to allow the Idaho Department of Fish and Game to continue to feed wintering elk in emergency situations on National Forest System lands at two locations within this project area. The Forest proposes to rehabilitate existing facilities at Salmon River, Riverside, Upper O'Brien, Holman Creek, and Mormon Bend Campgrounds; Snyder Spring Picnic Area; Yankee Fork floatboat launch site; and Buckhorn Bridge Picnic Site. Areas of impact at developed recreation sites will also be revegetated or otherwise protected or improved. The Forest further proposes: to remove thirteen camp sites and portions of the road at Basin Creek Campground, four sites at Holman Creek Campground, and one unit at Morman Creek Campground and to reclaim associated riparian and floodplain areas; to expand Sunny Gulch Campground to accomdate those developed sites lost at Basin Creek, Holman Creek Campgrounds; to manage undeveloped camping and river access by a combination of vehicle restrictions, permanent or temporary closures, and allowing undeveloped camping at areas

designated with signs and permanent fire grills; to provide improved river access facilities at Basin Creek and Four Aces; to improve/define/develop pullouts along Highway 75 to make them safer and provide educational and interpretation information at some of them; and to utilize seasonal closures at Lower Holman and Riverside Campgrounds, Buckhorn Bridge Picnic Site, and other areas along the river to reduce impacts to spawning salmon and/or their habitat.

**Decision To Be Made**

Based on the analysis in the EIS, two levels of decision must be made by the Forest Supervisor. The Forest Supervisor must decide what additional standards and guidelines, if any, must be incorporated into the Sawtooth National Forest Land and Resource Management Plan (FLRMP) to ensure recreation uses within the Salmon River Corridor are managed in such as fashion to allow for protection of the primary values of the SNRA, as established by PL92–400. This ''programmatic'' level of decision may result in an amendment to the FLRMP. The Forest Supervisor also must make ''site specific'' decisions as the the level of use that will be allowed to occur on the upper main Salmon River and what modifications if any are needed to both developed and dispersed recreation sites to ensure protection of the primary values of the SNRA, as established by PL 92–400.

**Issues Identified to Date**

Past scoping and public participation for some of these projects have helped identify preliminary issues for this project.

1. Recreation use may be causing impacts to sensitive, threatened, and endangered fish, wildlife and plants, and their associated habitat.
2. Recreation use may be causing the loss of vegetation and soil compaction.
3. Modifying current use and facilities may impact visitors recreation experience.
4. Modifying current use and facilities may impact the economy of local communities and businesses.
5. Use within the corridor may impact heritage resources.
6. Concentrations of elk during emergency winter feeding may be impacting resources and causing safety problems on Highway 75.
7. Condition of current facilities may be impacting visitors experiences.

**Possible Alternatives**

Alternative A—No Action. This alternative maintains the current location and management of developed and dispersed recreation sites. No special use permits would be issued for walk and wade, fishing, and floatboating. No river carrying capacity would be developed. Surfing would continue to occur and winter emergency elk feeding by Idaho Department of Fish and Game would continue to be reviewed on an as needed basis.

Alternative B—In this alternative, undeveloped camping and river access would be managed by a combination of vehicle restrictions, permanent or temporary closures, and allowing undeveloped camping at areas designated with signs and permanent fire grills. Numbers of sites available for undeveloped camping would generally remain the same. Eighteen sites would be removed from developed campgrounds and would be ''replaced'' by 18 new sites at Sunny Gulch Campground. Camping and day-use facilities in need of upgrading would be replaced. Number of river floatboat access sites would be reduced, but facilities at remaining river access sites would be improved. Seasonal closures would be utilized at Lower O'Brien and Riverside Campgrounds. All of Lower O'Brien and the lower portion of Riverside would be closed from August 1 to June 15. Pullouts occurring along Highway 75 that provide parking space for day use (fishing, sightseeing, picnicking, etc.) would be managed as much as practicable by utilizing barriers and/or designated trails to the river. Signs would be utilized when necessary to educate and/or notify visitors of any restrictions, such as seasonal access closures to protect spawning salmon and redds, or other resource needs. The portion of the upper Salmon River from the Fish Hatchery to the SNRA boundary would be closed to surfing. The six special use outfitter guide floatboating permits, the one special use year-round fishing permit, and four special use walk and wade permits would be issued for five years. Mitigation measures similar to what is currently being used would be included to minimize impacts to spawning salmon and their redds. A river floatboat carrying capacity would be determined. This capacity would allow for use and the enjoyment of the river that is compatible with the resources. Two areas would be approved for use by Idaho Fish and Game for emergency winter elk feeding.

Alternative C—In this alternative, undeveloped camping and river access would be managed by a combination of vehicle restrictions, permanent or temporary closures, and allowing undeveloped camping at areas designated with signs and permanent fire grills. Numbers of sites available for undeveloped camping would be reduced. Eighteen sites would be removed from developed campgrounds and would not be ''replaced''. Camping and day-use facilities in need of upgrading would be replaced. Number of river floatboat access sites would be reduced, but facilities at remaining river access sites would be improved. Seasonal closures would be utilized at Lower O'Brien and Riverside Campgrounds. All of Lower O'Brien and the lower portion of Riverside would be closed from August 1 to June 15. Pullouts occurring along Highway 75 that provide parking space for day use (fishing, sightseeing, picnicking, etc.) would be managed as much as practicable by utilizing barriers and/or designated trails to the river. Signs would be utilized when necessary to educate and/or notify visitors of any restrictions, such as seasonal access closures to protect spawning salmon and redds, or other resource needs. The portion of the upper Salmon River from the Fish Hatchery to the SNRA boundary would be closed to surfing. The six special use outfitter guide floatboating permits, the one special use year-round fishing permit, and four special use walk and wade permits would be issued for five years. Mitigation measures more restrictive than what are currently required would be included to minimize impacts to spawning salmon and their redds. A river floatboat carrying capacity would be determined. This capacity would generally be less than in Alternative B, but would allow for use and enjoyment of the river that is compatible with the resources. Two areas would be approved for use by Idaho Fish and Game for emergency winter elk feeding.

**Scoping Process**

This Notice of Intent formally initiates the scoping process for the draft environmental impact statement (DEIS). The Forest Service invites comments and suggestions on the scope of the analysis to be included in the DEIS. In addition, the Forest Service gives notice that it is beginning a full environmental analysis and decision-making process for this proposal so that interested or affected people may know how they can participate in the environmental analysis and contribute to the final decision. Public comments on the proposal are welcome and should be submitted in writing to Paul Ries, Area Ranger, Sawtooth National Recreation Area, Star Route, Ketchum, ID 83340. Comments will be most useful to the analysis team if they are received by August 31, 1995. The Forest Service

intends to hold public meetings on the proposal but the meetings have not been scheduled at this time.

There are no known permits or licenses required to implement the proposed actions. Several agencies and organizations will be invited to participate as cooperating agencies.

As previously stated, the Forest Service expects to publish the DEIS by mid-October 1995. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alters an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsion Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Please note that comments you make on the DEIS will be regarded as public information.

Thomas L. Tidwell, Acting Forest Supervisor, Sawtooth National Forest, is the responsible official.

Dated: July 24, 1995.

**Thomas L. Tidwell,**

*Acting Forest Supervisor.*

[FR Doc. 95–18553 Filed 7–27–95; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## Flower Garden Banks National Marine Sanctuary Symbol

**AGENCY:** Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** SRD is announcing the adoption of a symbol for the Flower Garden Banks National Marine Sanctuary, of the National Marine Sanctuary Program. Announcement in the **Federal Register** is required by the National Marine Sanctuaries Program Amendments Act of 1992 (Act). The symbol is one element of a pilot project under the Act to enhance funding for designation and management of national marine sanctuaries. In accordance with the Act, SRD is publishing, in the **Federal Register**, the symbol shown in the attachment to this document. This symbol shall be the official symbol for the Flower Garden Banks National Marine Sanctuary, one of the sites included in the National Marine Sanctuary Program. This notice also announces the opportunity for interested persons to become official sponsors of the Flower Garden Banks National Marine Sanctuary.

**DATES:** The Office of Ocean and Coastal Resource Management will begin using the new symbol immediately.

**ADDRESSES:** Information on becoming an official sponsor may be obtained from:

Justin Kenney, National Oceanic and Atmospheric Administration, Sanctuaries and Reserves Division, 1305 East-West Highway, 12th floor, Silver Spring, MD 20910

or

Dr. Stephen Gittings, Manager, Flower Garden Banks National Marine Sanctuary, 1716 Briarcrest Drive, Suite 702, Bryan, Texas 77802.

**FOR FURTHER INFORMATION CONTACT:** Justin Kenney at (301) 713–3145 ext. 153, or Dr. Stephen Gittings at (409) 847–9296.

**SUPPLEMENTARY INFORMATION:** Under Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, also known as the National Marine Sanctuaries Act, the United States Congress authorizes the designation of discrete areas of the marine environment as National Marine Sanctuaries to protect distinctive natural and cultural resources whose protection and beneficial use requires comprehensive planning and management. The National Marine Sanctuary Program was established pursuant to the National Marine Sanctuaries Act, and is administered by the Sanctuaries and Reserves Division of the National Oceanic and Atmospheric Administration.

The mission of the National Marine Sanctuary Program is to identify, designate and manage areas of marine environment of special national significance due to their conservation, recreational, ecological, historical, research, educational, or aesthetic qualities.

The Program currently has 14 designated sites: Olympic Coast, Cordell Bank, Gulf of the Farallones, Monterey Bay, Channel Islands, Hawaiian Islands Humpback Whale, Fagatele Bay, Florida Keys, Flower Garden Banks, Looe Key, Key Largo, Gray's Reef, the Monitor, and Stellwagen Bank National Marine Sanctuaries.

In 1992, with the passage of the National Marine Sanctuaries Program Amendments Act (Act), Title II of Pub. L. 102–587, Congress directed the National Marine Sanctuary Program to enhance funding for the designation and management of national marine sanctuaries through the creation, adoption and marketing of a symbol for the national program or for individual National Marine Sanctuaries. The National Marine Sanctuary Program symbol has been adopted and published in the **Federal Register** (Vol. 60, No. 59, March 28, 1995). This notice displays the symbol adopted for the Flower Garden Banks National Marine Sanctuary; this symbol was developed by Mr. Joel Hickerson from College Station, Texas.

The Act also directs the Sanctuary Program to solicit and designate official sponsors for the Program or the individual National Marine Sanctuaries. These sponsors shall be authorized to manufacture, reproduce, or use the symbol. The Sanctuary Program is authorized to sell rights to the symbols for such use and retain the funds to enhance and manage National Marine Sanctuaries. The symbol is the property of the United States and it is unlawful for any person, except a designated

sponsor, to manufacture, reproduce or use the symbol. Persons interested in becoming an official sponsor of the National Marine Sanctuary Program or of an individual sanctuary should contact Justin Kenney.

**W. Stanley Wilson,**

*Assistant Administrator, Department of Administrative Orders.*

BILLING CODE 3510–08–M

**Attachment: Flower Garden Banks National Marine Sanctuary Symbol**

[FR Doc. 95–18612 Filed 7–27–95; 8:45 am]
BILLING CODE 3510–08–C

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to the procurement list.

**SUMMARY:** This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** August 28, 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 June 2 and 9, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 F.R. 28781 and 30523) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the 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.

Accordingly, the following commodity and services are hereby added to the Procurement List:

*Commodity*

Folder, Medical, Outpatient
7530–00–NIB–0193

(Requirements for the VA Medical Center, Richmond, Virginia)

*Services*

Administrative Services for the following Washington, DC locations:

Department of the Treasury, Technical Assistance Office, 1730 K Street, NW

Department of the Treasury, Main Treasury, 1500 Pennsylvania Avenue, NW

Saudi-Arabian Joint Commission Office, 1401 New York Avenue, NW

Grounds Maintenance, Fleet and Industrial Supply Center, Administrative Areas, Oahu, Hawaii

Janitorial/Custodial, U.S. Army Reserve Center, Montgomery County Airport, 100 South Parkway, Conroe, Texas

Janitorial/Custodial, Drug Enforcement Agency, Camp Upshur International Training Center, Quantico, Virginia

Medical Transcription, Department of Veterans Affairs Medical Center, 7305 N. Military Trail, West Palm Beach, Florida.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 95–18575 Filed 7–27–95; 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 services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** August 28, 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 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 commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities 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 commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

*Commodities*

Tape, Sound Recording
5835–00–168–9528
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania

Folder, File
7530–00–990–8884
(Requirements for the Palmetto, GA depot only)
NPA: Georgia Industries for the Blind, Atlanta, Georgia at its facility in Bainbridge, Georgia

*Services*

Administrative Services
St. Paul U.S. Army Engineer District
St. Paul, Minnesota
NPA: Tasks Unlimited, Inc., Minneapolis, Minnesota

Administrative Services
Federal Aviation Administration
Renton, Washington
NPA: Northwest Center for the Retarded, Seattle, Washington

Data Entry/Data Base Management
General Services Administration
Paints and Chemicals Commodity Center
Auburn, Washington
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington

Food Service Attendant
U.S. Coast Guard Air Station
Clearwater, Florida
NPA: The Pinellas Association for Retarded Children, St. Petersburg, Florida

Grounds Maintenance
Hickam Air Force Base, Hawaii
NPA: Makaala, Inc., Honolulu, Hawaii

Mailroom Operation
U.S. Army Reserve Command
Atlanta, Georgia
NPA: WORKTEC, Jonesboro, Georgia.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 95–18576 Filed 7–27–95; 8:45 am]

BILLING CODE 6820–33–P

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Information Collection Request Submitted to the Office of Management and Budget for Review

**AGENCY:** The Corporation for National and Community Service (CNS).

**ACTION:** Information collection request submitted to the Office of Management and Budget (OMB) for review.

**SUMMARY:** This notice provides information about an information proposal by CNS, currently under review by OMB. The proposal includes survey and data collection forms to be used for the national evaluation of the Learn and Serve K–12 program. Forms included in the proposal include surveys of program participants and comparison group members, teachers, host agency representatives, and volunteers.

**DATES:** An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect data collection at the start of the school year. OMB and CNS will consider comments on the proposed collection of information and record keeping requirements received on or before August 7, 1995. Copies of the proposed forms and supporting documents may be obtained by contacting CNS.

**ADDRESSES:** Send comment to both:

Chuck Helfer Study Director, CNS, 1201 New York Avenue NW., Washington, DC 20525

Daniel Chenock, Desk Officer, OMB, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Chuck Helfer, (202) 606–5000, extension 248.

**SUPPLEMENTARY INFORMATION:** Office of the Corporation for National and Community Service.

*Issuing Proposal:* Office of Evaluation.

*Title of Forms:* Learn and Serve K–12 Participant and Comparison Group Baseline Surveys, participant and Comparison Group Post-Program Surveys, Participant and Comparison Group Follow-Up Surveys; Learn and Serve K–12 Participant Rosters; Learn and Serve K–12 Parental Consent Forms; Learn and Serve K–12 School-Wide Student Survey; Learn and Serve K–12 Faculty Survey; Learn and Serve K–12 Host Agency Survey; and Learn and Serve K–12 Volunteer Information Form.

*Need and Use:* The National and Community Service Trust Act of 1993 (Pub. L. 103–82) requires the Corporation for National Service to evaluate its programs on a regular basis. This information is required for program management, planning, and required record keeping.

*Type of Request*: Submission of a new collection.

*Respondents Obligation to Reply*: Voluntary.

*Frequency of Collection*: Twice a year for 18 months.

*Estimated Number of Annual Responses*: 8840.

*Average Burden Hours per Response*: 31 hours.

*Estimated Annual Reporting or Disclosure Burden*: 2736 hours.

**Regulatory Authority:** Public Law 103–82.

Dated: July 24, 1995.

**Lance Potter,**

*Director, Office of Evaluation.*

[FR Doc. 95–18597 Filed 7–27–95; 8:45 am]

**BILLING CODE 6050–28–M**

## DEPARTMENT OF EDUCATION

### National Assessment Governing Board; Meeting

**AGENCY:** National Assessment Governing Board.

**ACTION:** Amendment to published notice of National Assessment Governing Board meeting.

**SUMMARY:** Notice is hereby given of an amendment to the notice of a meeting of the National Assessment Governing Board scheduled for August 3–5, 1995 published on July 17, 1995, FR60, page 36406. The agenda for the Achievement Levels Committee meeting will include an update on plans for the evaluation of the achievement levels project. This update will be presented in open session from 6 p.m. to 6:30 p.m. Therefore, the Achievement Levels Committee will meet, August 3, 1995, in partially closed session; 4–6 p.m. (closed), 6–6:30 p.m. (open).

Dated: July 25, 1995.

**Roy Truby,**

*Executive Director, National Assessment Governing Board.*

[FR Doc. 95–18549 Filed 7–27–95; 8:45 am]

**BILLING CODE 4000–01–M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER95–232–002, et al.]**

### Kimball Power Company, et al., Electric Rate and Corporate Regulation Filings

July 21, 1995.

Take notice that the following filings have been made with the Commission:

**1. Kimball Power Company**

[Docket No. ER95–232–002]

Take notice that on July 17, 1995, Kimball Power Company tendered for filing certain information as required by the Commission's letter order dated February 1, 1995. Copies of the informational filing are on file with the Commission and are available for public inspection.

**2. Puget Sound Power & Light Company**

[Docket No. ER95–824–000]

Take notice that on July 18, 1995, Puget Sound Power & Light Company tendered for filing an amendment to its filing in this docket of the Agreement Providing for Termination of Agreement for Assignment and for Exchange of Power between Puget and Public Utility District No. 1 of Grays Harbor County, Washington (the District). A copy of the amendment was served upon the District.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**3. Alabama Power Company**

[Docket No. ER95–912–000]

Take notice that on June 13, 1995, Alabama Power Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**4. Power Clearinghouse Inc.**

[Docket No. ER95–914–001]

Take notice that on July 17, 1995, Power Clearinghouse Inc. tendered for filing certain information as required by the Commission's letter order dated May 11, 1995. Copies of the informational filing are on file with the Commission and are available for public inspection.

**5. Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company**

[Docket No. ER95–1076–000]

Take notice that on July 14, 1995, Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO) and West Texas Utilities Company (WTU) tendered for filing minor amendments to their earlier filing of certain non-rate revisions to their respective Coordination Sales Tariffs (CTS–1 Tariffs).

PSO, SWEPCO and WTU continue to seek an effective date of May 22, 1995. Copies of this filing were served on the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the customers for whom PSO, SWEPCO and WTU, respectively, have filed service agreements under the CTS–1 Tariffs.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**6. Commonwealth Edison Company**

[Docket No. ER95–1092–000]

Take notice that on June 19, 1995, Commonwealth Edison Company (ComEd) amended the filing made earlier in this proceeding to submit Service Agreements, establishing Wisconsin Public Power Inc. System (WPPI), AES Power, Inc. (AES), Rainbow Energy Marketing Corporation (Rainbow), and Stand Energy Corporation (Stand), as customers under the terms of ComEd's Transmission Service Tariff FTS–1 (FTS–1 Tariff). The Commission has previously designated the FTS–1 Tariff as FERC Electric Tariff, Original Volume No. 4.

ComEd requests an effective date of July 7, 1995, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served upon WPPI, AES, Rainbow, Stand, and the Illinois Commerce Commission.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**7. Public Service Electric and Gas Company**

[Docket No. ER95–1288–000]

Take notice that on June 29, 1995, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial rate schedule to provide transmission service to Atlantic City Electric Company (PURCHASER). The Rate Schedule provides for a monthly transmission, energy losses and administrative charge for delivery by PSE&G of the City of Vineland's share of the State of New Jersey's allocation of New York Power Authority neighboring state hydroelectricity from the New York/New Jersey border to Purchaser. PSE&G requests that the filing be permitted to become effective on July 1, 1995.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**8. Public Service Electric and Gas Company**

[Docket No. ER95–1289–000]

Take notice that on June 29, 1995, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial rate schedule to provide transmission and subtransmission service to the Borough of Park Ridge (PURCHASER). The Rate Schedule provides for a monthly transmission, energy losses and administrative charge for delivery by PSE&G of the Purchaser's share of the State of New Jersey's allocation of New York Power Authority neighboring state hydroelectricity from the New York/New Jersey border to Purchaser. PSE&G requests that the filing be permitted to become effective on July 1, 1995.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**9. Public Service Electric and Gas Company**

[Docket No. ER95–1290–000]

Take notice that on June 29, 1995, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial rate schedule to provide transmission and subtransmission service to the Borough of South River (PURCHASER). The Rate Schedule provides for a monthly transmission, subtransmission, energy losses and administrative charge for delivery by PSE&G of the Purchaser's share of the State of New Jersey's allocation of New York Power Authority neighboring state hydroelectricity from the New York/New Jersey border to Purchaser. PSE&G requests that the filing be permitted to become effective on July 1, 1995.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**10. Wallkill Generating Company, L.P.**

[Docket No. ER95–1316–000]

Take notice that on June 30, 1995, Wallkill Generating Company, L.P. tendered for filing a Notice of Cancellation of Wallkill's FERC No. 1 Rate Schedule.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**11. Washington Water Power Company**

[Docket No. ER95–1355–000]

Take notice that on July 10, 1995, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a signed service agreement under FERC Electric Tariff Volume No. 2, nonfirm transmission, with Rainbow Energy Marketing Corporation along with a Certificate of Concurrence with respect to loss returns. WWP requests waiver of the prior notice requirement and requests an effective date of August 1, 1995.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**12. Washington Water Power Company**

[Docket No. ER95–1356–000]

Take notice that on July 10, 1995, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a signed service agreement under FERC Electric Tariff Volume No. 4 with Koch Power Services, Inc., along with a Certificate of Concurrence with respect to exchanges. WWP requests waiver of the prior notice requirement and requests an effective date of August 1, 1995.

WWP is also submitting two signed service agreements which had previously been accepted by FERC as unsigned service agreements. They are Equitable Power Services Company and Rainbow Energy Marketing Corp. Certificates of Concurrence with respect to exchanges are also included.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**13. Amoco Power Marketing Corporation**

[Docket No. ER95–1359–000]

Take notice that on July 11, 1995, Amoco Power Marketing Corporation, tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207, and § 35.12 of the Commission's Regulations under the Federal Power Act, 18 CFR 35.12, a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its FERC Electric Rate Schedule No. 1 to be effective on September 5, 1995.

Amoco Power Marketing Corporation intends to engage in electric power and energy transactions as a marketer and broker. In Amoco Power Marketing Corporation's marketing transactions, Amoco Power Marketing Corporation proposes to charge rates mutually agreed upon by the parties. Amoco Power Marketing Corporation is not in the business of producing or transmitting electric power. Amoco Power Marketing Corporation does not currently have or contemplate acquiring title to any electric power transmission facilities or any electricity service area franchises.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**14. New England Power Company**

[Docket No. ER95–1360–000]

Take notice that on July 11, 1995, New England Power Company filed a Service Agreement with Central Hudson Gas & Electric for sales under NEP's FERC Electric Tariff, Original Volume No. 5.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**15. Union Electric Company**

[Docket No. ER95–1361–000]

Take notice that on July 11, 1995, Union Electric Company (UE), tendered for filing a Transmission Service Agreement dated July 12, 1995 between Louis Dreyfus Electric Power Inc. (Dreyfus) and UE. UE asserts that the purpose of the Agreements is to set out specific rates, terms, and conditions for transmission service transactions from UE to Dreyfus.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**16. Northern States Power Company (Minnesota Company)**

[Docket No. ER95–1363–000]

Take notice that on July 11, 1995, Northern States Power Company (Minnesota) (NSP), tendered for filing an Agreement dated June 30, 1995, between NSP and the City of Shakopee (City). NSP's firm power service to City under a Firm Power Service Resale Agreement will terminate July 17, 1995. For the period between July 18, 1995, and the finalization of the new Distribution Facilities Agreement, an Agreement continuing the current wholesale distribution substation rate of $0.47/Kw-month on an interim basis has been executed. This Agreement shall remain in effect until December 31, 1995.

NSP requests the Agreement be accepted for filing effective July 18, 1995, and requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**17. Wisconsin Power and Light Company**

[Docket No. ER95–1364–000]

Take notice that on July 11, 1995, Wisconsin Power and Light Company (WP&L), tendered for filing an Agreement dated June 1, 1995, establishing Cenergy, Inc. as a customer under the terms of WP&L's Transmission Tariff T–2.

WP&L requests an effective date of June 1, 1995 and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**18. Consolidated Edison Company of New York, Inc.**

[Docket No. ER95–1365–000]

Take notice that on July 11, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement with Heartland Energy Services, Inc. (HES) to provide for the sale of energy and capacity. For energy sold by Con Edison the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per Kwhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity sold by Con Edison is $7.70 per megawatt hour. All energy and capacity sold by HES will be at market-based rates.

Con Edison states that a copy of this filing has been served by mail upon HES.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**19. Montana Power Company**

[Docket No. ER95–1366–000]

Take notice that on July 12, 1995, Montana Power Company (Montana), tendered for filing a revised Appendix 1 as required by Exhibit C for retail sales in accordance with the provisions of the Residential Purchase and Sale Agreement (Agreement) between Montana and the Bonneville Power Administration (BPA).

The Agreement was entered into pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, Public Law 96–501. The Agreement provides for the exchange of electric power between Montana and BPA for the benefit of Montana's residential and farm customers.

A copy of the filing has been served upon BPA.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**20. Southern Company Services, Inc.**

[Docket No. ER95–1367–000]

Take notice that on July 12, 1995, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed an Amendment, dated as of June 12, 1995, to the Interchange Contract, (Interchange Contract), dated as of December 18, 1991, between Duke Power Company and Southern Companies which amends the Interchange Contract by reflecting the termination of the Tallulah Falls Interconnection.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**21. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company**

[Docket No. ER95–1368–000 ]

Take notice that on July 12, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and New York State Electric & Gas Corporation (NYSEG), dated July 6, 1995. This Service Agreement specifies that NYSEG has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and NYSEG to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of July 6, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**22. New York State Electric & Gas Corporation**

[Docket No. ER95–1369–000]

Take notice that on July 12, 1995, New York State Electric & Gas Corporation (NYSEG), tendered for filing Supplement No. 13 to its Agreement with the New York Power Authority (NYPA), designated NYSEG Rate Schedule FERC No. 112. The proposed changes would affect revenues by $0 based on the twelve-month period ending June 30, 1996.

This rate filing, Supplement No. 13 to NYSEG Rate Schedule FERC No. 112, is made pursuant to Article No. 2 of the September 28, 1993 Facilities Agreement. The annual charges associated with other taxes, operating expenses, maintenance expenses, working capital, and associated revenue taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve months ended December 31, 1994.

NYSEG requests an effective date of July 1, 1995, and, therefore, requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the New York Power Authority and on

the Public Service Commission of the State of New York.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**23. CRSS Power Marketing, Inc.**

[Docket No. ER94–142–006]

Take notice that on July 14, 1995, CRSS Power Marketing, Inc. tendered for filing certain information as required by the Commission's letter order dated December 30, 1993. Copies of the informational filing are on file with the Commission and are available for public inspection.

**24. Eastern Edison Company**

[Docket No. ER95–1160–000]

Take notice that on July 10, 1995, Eastern Edison Company filed a supplement to its June 5, 1995 filing providing information requested by the rate filing staff.

*Comment date:* August 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

**25. EDC Power Marketing, Inc.**

[Docket No. ER94–1538–003]

Take notice that on July 14, 1995, EDC Power Marketing, Inc. tendered for filing certain information as required by the Commission's letter order dated September 14, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–18587 Filed 7–27–95; 8:45 am]

BILLING CODE 6717–01–P

**[Docket No. ER95–282–001, et al.]**

## PECO Energy Company, et al.; Electric Rate and Corporate Regulation Filings

July 20, 1995.

Take notice that the following filings have been made with the Commission:

**1. PECO Energy Company**

[Docket No. ER95–282–001]

Take notice that on July 10, 1995 PECO Energy Company tendered for filing its compliance filing in the above-referenced docket.

*Comment date:* August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

**2. Duquesne Light Company**

[Docket No. ER95–531–000]

Take notice that on July 10, 1995, Duquesne Light Company tendered under the Commission's Rules of Practice and Procedure copies of revised Appendix 90CAAA to Rate Schedule FPC Nos. 8, 9 and 24. Appendix 90CAAA was tendered to ensure compliance with the Commission's policy Statement and Interim Rule issued December 15, 1994 at Docket No. PL95–1–000, regarding ratemaking treatment of the cost of emission allowances in coordination sales.

*Comment date:* August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

**3. Empresa Electrica Corani S.A.**

[Docket No. EG95–59–000]

On July 13, 1995, Empresa Electrica Corani S.A. (''Corani''), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Corani, a Bolivian corporation, will be owned in part by Inversiones Dominion Bolivia S.A., Inc., a Bolivian holding company, which will be a wholly-owned subsidiary of subsidiaries of Dominion Resources, Inc., a Virginia corporation.

Corani states that it will own and operate a 72 MW hydroelectric generating station consisting of four 18 MW turbogenerators and a 54 MW hydroelectric generating station consisting of four 13.5 MW turbogenerators and related structures (the ''Facilities''). The Facilities are located along the Corani Reservoir in the Province of Chapare, Bolivia. Corani requests a determination that it will be an exempt wholesale generator under Section 32(a)(1) of the Public Utility Holding Company Act of 1935.

*Comment date:* August 11, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**4. MG Electric Power, Inc.**

[Docket No. ER93–839–001]

Take notice that on July 17, 1995, MG Electric Power, Inc. tendered for filing certain information as required by the Commission's letter order dated October 19, 1993. Copies of the informational filing are on file with the Commission and are available for public inspection.

**5. R.J. Dahnke & Associates**

[Docket No. ER94–1352–003]

Take notice that on July 6, 1995, R.J. Dahnke & Associates tendered for filing certain information as required by the Commission's letter order dated August 13, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

**6. Central Maine Power Company**

[Docket No. ER94–1669–000]

Take notice that on June 29, 1995, Central Maine Power Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

**7. Tex Par Energy, Inc.**

[Docket No. ER95–62–002]

Take notice that on July 10, 1995, Tex Par Energy, Inc. tendered for filing certain information as required by the Commission's letter order dated December 27, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

**8. Midwest Power Systems, Inc.**

[Docket No. ER95–486–001]

Take notice that on July 7, 1995 Midwest Power Systems, Inc. tendered for filing its compliance filing in the above-referenced docket.

*Comment date:* August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

**9. Ohio Edison Company**

[Docket No. ER95–549–000]

Take notice that on July 11, 1995 Ohio Edison Company tendered for filing a revised amendment to the Power Purchase and Sale Agreement with CNG Power Services Corporation. The purpose of this filing is to comply with the Commission's Order Directing Revisions and Accepting For Filing

Rates For Emission Allowances, As Modified issued June 2, 1995 in Docket No. ER95–135–000, et al.

*Comment date:* August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

**10. Wisconsin Electric Power Company**

[Docket No. ER95–559–001]

Take notice that Wisconsin Electric Company (Wisconsin Electric or the Company) on July 3, 1995, tendered for filing revisions to its coordination rate schedules between itself and a number of present and prospective wholesale energy purchasers. This filing supports Wisconsin Electric's use of the 1500 allowance block index and contains the revised rate sheets that include the items as specified in the Order Directing Revisions and Accepting For Filing Rates For Emission Allowances, As Modified dated June 2, 1995.

Wisconsin Electric respectfully requests an effective date of January 1, 1995.

Copies of the filing have been served on all of the affected wholesale purchasers, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

*Comment date:* August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

**11. Allegheny Power Service Corporation on behalf of Monongahela Power Company The Potomac Edison Company and West Penn Power Company (the APS Companies)**

[Docket No. ER95–570–000]

Take notice that on June 30, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (''the APS Companies'') filed a request for withdrawal of a deferral on action related to Supplement No. 1 in the above-referenced docket. The APS Companies have submitted a filing to revise their initial emission allowance filing to comply with the Commission order, and the Commission has accepted the subject tariff for filing; therefore, the deferral of action is no longer necessary. Allegheny Power Service Corporation requests waiver of notice requirements and asks the Commission to honor the proposed effective date agreed to by the parties.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

**12. Montaup Electric Company**

[Docket No. ER95–1346–000]

Take notice that on July 7, 1995, Montaup Electric Company filed a Notice of Cancellation of a service agreement between Montaup and Commonwealth Electric, Montaup Rate Schedule No. 104.

*Comment date:* August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

**13. Arizona Public Service Company**

[Docket No. ER95–1347–000]

Take notice that on July 7, 1995, Arizona Public Service Company (APS), tendered for filing revised Exhibits applicable under the San Carlos Indian Irrigation Project (SCIIP) Wholesale Power Supply Agreement, APS–FERC Rate Schedule No. 201 and the Colorado River Indian Irrigation Project (CRIIP) Wholesale Power Supply Agreement, APS–FPC Rate Schedule No. 65.

*Comment date:* August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

**14. Northeast Utilities Service Company**

[Docket No. ER95–1348–000]

Take notice that on July 7, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Public Service Electric & Gas Company under the NU System Companies System Power Sales/ Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to Public Service Electric & Gas Company.

NUSCO requests that the Service Agreement become effective on July 24, 1995.

*Comment date:* August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

**15. Florida Power & Light Company**

[Docket No. ER95–1349–000]

Take notice that on July 7, 1995, Florida Power & Light Company (FPL), tendered for filing the Notices of Contract Demand for Power Year 1998 for the following customers under Rate Schedule PR of FPL's Wholesale Electric Tariff: City of Starke, City of Jacksonville Beach; City of Green Cove Springs, and the City of Clewiston.

*Comment date:* August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

**16. Central Illinois Public Service Company**

[Docket No. ER95–1350–000]

Take notice that on July 7, 1995, Central Illinois Public Service Company (CIPS), submitted for filing revised Appendices A (Service Agreements) to the Interconnection Agreement between CIPS, Illinois Power Company (IP) and Union Electric Company (UE). The appendices provide for relocated meters and a new point of interconnection at Ina.

CIPS requests an effective date for each of the appendices of January 1, 1995, and accordingly seeks waiver of the Commission's notice requirement. CIPS served copies of the filing on IP, UE, the Illinois Commerce Commission and the Public Service Commission of Missouri.

*Comment date:* August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

**17. Arizona Public Service Company**

[Docket No. ER95–1351–000]

Take notice that on July 7, 1995, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS–FERC Electric Tariff Original Volume No. 1 (APS Tariff) with the following entities:

Engelhard Power Marketing, Inc.
National Electric Associates Limited Partnership
Coastal Electric Services Company

A copy of this filing has been served on the above listed entities and the Arizona Corporation Commission.

*Comment date:* August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

**18. Indiana Michigan Power Company**

[Docket No. ER95–1352–000]

Take notice that on July 10, 1995, Indiana Michigan Power Company (I&M), tendered for filing with the Commission Facility Request No. 6 to the existing Agreement, dated December 11, 1989 (1989 Agreement), between I&M and Wabash Valley Power Association, Inc. (WVPA). Facility Request No. 6 was negotiated in response to WVPA's request that I&M provide an additional delivery point at 138 Kv for a new station to be operated by Noble County REMC (Co-op Name) and known as Simmer Lake Station. The Commission has previously designated the 1989 Agreement as I&M's Rate Schedule FERC No. 81.

As requested by, and for the sole benefit of WVPA, I&M proposes an effective date of September 15, 1995, for Facilities Request No. 6. A copy of this

filing was served upon WVPA, the Indiana Utility Regulatory Commission, and the Michigan Public Service Commission.

*Comment date:* August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

**19. Midwest Power Systems, Inc.**

[Docket No. ER95–1353–000]

Take notice that on July 10, 1995, Midwest Power Systems Inc. (Midwest), tendered for filing Amendment No. 3 to the Interconnection and Interchange Agreement (Agreement) between Nebraska Public Power District (NPPD) and Midwest.

The purpose of Amendment No. 3 is to establish an effective date of January 1 for the biennial rate of the facilities charge contained in the Agreement.

MPSI respectfully requests an effective date of 60 days after the original filing date of Amendment No. 3.

MPSI states that copies of this filing were served on NPPD and the Iowa Utilities Board.

*Comment date:* August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

**20. Northeast Utilities Service Company**

[Docket No. ER95–1354–000]

Take notice that on July 10, 1995, Northeast Utilities Service Company (NUSCO), on behalf of the Northeast Utilities System Companies, filed a Service Agreement for firm transmission service to City of Holyoke, Massachusetts Gas and Electric Department (HG&E) under NUSCO's Tariff No. 1. The Service Agreement provides for delivery of HG&E's allocation of New York Power Authority hydropower from July 1, 1995 through October 31, 2003.

NUSCO requests an effective date of July 1, 1995.

NUSCO states that copies of its submission have been mailed or delivered to HG&E.

*Comment date:* August 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

**21. Carolina Energy, Limited Partnership**

[Docket No. QF95–291–000]

On July 14, 1995, Carolina Energy, Limited Partnership (applicant), c/o VEDCO Energy Corp., 11757 Kay Freeway, Ste. 1420, Houston, Texas 77079, submitted for filing an application for certification of a facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the Small Power Production Facility will be located in Wilson County, North Carolina and will consist of a fluid bed combustor-boiler system and a condensing steam turbine generator. The primary energy source will be biomass in the form of refuse derived fuel. The maximum net electric power production capacity will be 7.3 MW. The facility is expected to begin commercial operation in the second quarter of 1997.

*Comment date:* August 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–18545 Filed 7–27–95; 8:45 am]

BILLING CODE 6717–01–P

## Notice of Application for Approval of Plan To Purchase Homes Within Project Boundary and Compensate Residents Pursuant to Article 410

July 24, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Approval of Plan to Purchase Homes Within Project Boundary and Compensate Residents Pursuant to Article 410.

b. *Project No:* 10455–008.

c. *Date Filed:* April 6, 1995.

d. *Applicant:* JDJ Energy Company, Inc.

e. *Name of Project:* River Mountain Project.

f. *Location:* Arkansas River, Logan County, Arkansas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Stewart Noland, P.E., Consulting Engineer, 5210 Sherwood Road, Little Rock, AR 72207, (501) 661–9228.

i. *FERC Contact:* Heather Campbell, (202) 219–3097.

j. *Comment Date:* September 5, 1995.

k. *Description of Project:* JDJ Energy Company, Inc. filed its property acquisition plan, required by article 410, which includes procedures for: purchasing ten residences located within the project boundary; providing compensation to residents who are affected by project construction activities; and, mitigating project related impacts to local residents.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also

be sent to the Applicant's representatives.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–18541 Filed 7–27–95; 8:45 am]

BILLING CODE 6717–01–M

**[Docket Nos. ST95–2622–000 et al.]**

## Panhandle Eastern Pipe Line Co. Notice of Self-Implementing Transactions

July 24, 1995.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and Section 7 of the NGA and Section 5 of the Outer Continental Shelf Lands Act.[1]

The ''Recipient'' column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The ''Part 284 Subpart'' column in the following table indicates the type of transaction.

A ''B'' indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to section 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A ''C'' indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to section 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A ''D'' indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to Section 284.147(d) of the Commission's Regulations.

An ''E'' indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to Section 284.163 of the Commission's regulations and section 312 of the NGPA.

A ''G'' indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.222 and a blanket certificate issued under section 284.221 of the Commission's regulations.

A ''G–I'' indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under Section 284.227 of the Commission's regulations.

A ''G–S'' indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to Section 284.223 and a blanket certificate issued under section 284.221 of the Commission's regulations.

A ''G–LT'' or ''G–LS'' indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under section 284.224 of the Commission's regulations.

A ''G–HT'' or ''G–HS'' indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under section 284.224 of the Commission's regulations.

A ''K'' indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to section 284.303 of the Commission's regulations.

A ''K–S'' indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to section 284.303 of the Commission's regulations.

**Lois D. Cashell,**

*Secretary.*

| Docket No.[1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity[2] | Aff. Y/A/N[3] | Rate sch. | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST95–2622 | PANHANDLE EASTERN PIPE LINE CO. | PEPCO ENERGY CO. | 06–01–95 | G–S | 29,973 | N | F | 05–08–95 | 03–31–15 |
| ST95–2623 | LONE STAR PIPELINE CO. | TRANSWESTERN PIPELINE CO., ET AL. | 06–01–95 | C | 20,000 | N | I | 05–01–95 | INDEF. |
| ST95–2624 | LONE STAR PIPELINE CO. | EL PASO NATURAL GAS CO., ET AL. | 06–01–95 | C | 30,000 | N | I | 05–01–95 | INDEF. |
| ST95–2625 | LONE STAR PIPELINE CO. | TRANSWESTERN PIPELINE CO., ET AL. | 06–01–95 | C | 35,000 | N | I | 05–01–95 | INDEF. |
| ST95–2626 | FLORIDA GAS TRANSMISSION CO. | DESTEC ENERGY, INC. | 06–01–95 | G–S | 12,600 | N | F | 05–04–95 | 02–28–15 |
| ST95–2627 | FLORIDA GAS TRANSMISSION CO. | MUNICIPAL AUTHORITY OF FLORIDA. | 06–01–95 | G–S | 3,781 | N | F | 05–04–95 | INDEF. |
| ST95–2628 | MISSISSIPPI RIVER TRANS. CORP. | NATIONAL STEEL CORP. | 06–01–95 | G–S | 1,000 | N | F | 04–01–95 | INDEF. |
| ST95–2629 | DELHI GAS PIPELINE CORP. | TRANSCONTINENTAL G/P/L CORP., ET AL. | 06–01–95 | C | 20,000 | N | I | 05–01–95 | INDEF. |
| ST95–2630 | WILLIAMS NATURAL GAS CO. | BOYD ROSENE & ASSOCIATES, INC. | 06–01–95 | G–S | 5,000 | N | I | 04–19–95 | 09–30–98 |
| ST95–2631 | TRAILBLAZER PIPELINE CO. | MIDCON GAS SERVICES CORP. | 06–01–95 | G–S | 27,475 | N | F | 04–01–95 | 09–30–95 |
| ST95–2632 | TRUNKLINE GAS CO. | HOWARD ENERGY CO., INC. | 06–05–95 | G–S | 103,500 | N | I | 05–27–95 | INDEF. |

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

| Docket No.[1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity[2] | Aff. Y/A/N[3] | Rate sch. | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST95–2633 | EL PASO NATURAL GAS CO. | CONTINENTAL NATURAL GAS, INC. | 06–05–95 | G–S | 30,900 | N | I | 05–06–95 | INDEF. |
| ST95–2634 | EL PASO NATURAL GAS CO. | OXY USA INC ..... | 06–05–95 | G–S | 15,000 | N | I | 05–06–95 | INDEF. |
| ST95–2635 | TEJAS GAS PIPELINE CO. | TRUNKLINE GAS CO. | 06–05–95 | C | 65,000 | N | I | 04–18–95 | INDEF. |
| ST95–2636 | TEJAS GAS PIPELINE CO. | TRUNKLINE GAS CO. | 06–05–95 | C | N/A | Y | I | 05–01–95 | INDEF |
| ST95–2637 | TEJAS GAS PIPELINE CO. | TENNESSEE GAS PIPELINE CO. | 06–05–95 | C | N/A | Y | I | 01–01–95 | INDEF. |
| ST95–2638 | TRANSTEXAS GAS CORP. | FLORIDA GAS TRANSMISSION CO., ET AL. | 06–05–95 | C | 20,000 | N | I | 04–29–95 | INDEF. |
| ST95–2639 | WILLIAMS NATURAL GAS CO. | TENASKA MARKETING VENTURES. | 06–06–95 | G–S | 100,000 | N | I | 05–23–95 | INDEF. |
| ST95–2640 | EL PASO NATURAL GAS CO. | UNION OIL CO. OF CALIFORNIA. | 06–07–95 | G–S | 30,900 | N | I | 05–09–95 | INDEF. |
| ST95–2641 | NORTHERN NATURAL GAS CO. | WESTERN GAS RESOURCES, INC. | 06–07–95 | G–S | 10,000 | N | F | 04–01–95 | 04–30–95 |
| ST95–2642 | NORTHERN NATURAL GAS CO. | EASTERN ENERGY MARKETING, INC. | 06–07–95 | G–S | 15,000 | N | I | 05–01–95 | INDEF. |
| ST95–2643 | NORTHERN NATURAL GAS CO. | POCO PETROLEUMS LTD. | 06–07–95 | G–S | 5,020 | N | F | 05–01–95 | 05–31–95 |
| ST95–2644 | NORTHERN NATURAL GAS CO. | CIBOLA CORP ..... | 06–07–95 | G–S | 8,582 | N | F | 05–01–95 | 05–31–95 |
| ST95–2645 | NORTHERN NATURAL GAS CO. | CITY OF VIRGINIA .. | 06–07–95 | B/G–S | 1,000 | N | F | 05–01–95 | 05–31–95 |
| ST95–2646 | NORTHERN NATURAL GAS CO. | AQUILA ENERGY MARKETING CORP. | 06–07–95 | G–S | 5,158 | N | F | 05–01–95 | 05–31–95 |
| ST95–2647 | NORTHERN NATURAL GAS CO. | WESTERN NATURAL GAS CO. | 06–07–95 | G–S | 1,500 | N | I | 05–01–95 | INDEF. |
| ST95–2648 | NORTHERN NATURAL GAS CO. | APPALACHIAN GAS SALES, INC. | 06–07–95 | G–S | 100,000 | N | I | 04–04–95 | INDEF. |
| ST95–2649 | NORTHERN NATURAL GAS CO. | CNG ENERGY SERVICES CORP. | 06–07–95 | G–S | 50,000 | N | I | 04–01–95 | INDEF. |
| ST95–2650 | TEXAS EASTERN TRANSMISSION CORP. | EASTEX HYDROCARBONS, INC. | 06–07–95 | G–S | 1,200 | N | F | 04–01–95 | INDEF. |
| ST95–2651 | TRAILBLAZER PIPELINE CO. | MINNEGASCO, A DIVISION OF ARKLA. | 06–07–95 | G–S | 353,000 | N | I | 01–06–95 | INDEF. |
| ST95–2652 | TRAILBLAZER PIPELINE CO. | AMOCO ENERGY TRADING CORP. | 06–07–95 | G–S | 500 | N | F | 04–01–95 | 03–31–96 |
| ST95–2653 | NATIONAL FUEL GAS SUPPLY CORP. | CAPARO STEEL CO | 06–07–95 | G–S | 5,000 | N | I | 05–01–95 | 05–01–96 |
| ST95–2654 | TRANSOK, INC ..... | ANR PIPELINE CO., ET AL. | 06–08–95 | C | 10,000 | N | I | 06–02–95 | INDEF. |
| ST95–2655 | TRANSOK, INC ..... | ANR PIPELINE CO., ET AL. | 06–08–95 | C | 1,000 | N | I | 06–01–95 | INDEF. |
| ST95–2656 | TRANSOK, INC ..... | ANR PIPELINE CO., ET AL. | 06–08–95 | C | 4,000 | N | I | 05–20–95 | INDEF. |
| ST95–2657 | TRANSOK, INC ..... | ANR PIPELINE CO., ET AL. | 06–08–95 | C | 4,000 | N | I | 05–20–95 | INDEF. |
| ST95–2658 | TRANSOK, INC ..... | ANR PIPELINE CO., ET AL. | 06–08–95 | C | 10,000 | N | I | 06–02–95 | INDEF. |
| ST95–2659 | NORTHWEST PIPELINE CORP. | CONOCO, INC ..... | 06–08–95 | G–S | 15,000 | N | F | 06–03–95 | 06–15–95 |
| ST95–2660 | NORTHERN NATURAL GAS CO. | AQUILA ENERGY MARKETING CORP. | 06–08–95 | G–S | 10,000 | N | F | 04–01–95 | 10–31–95 |
| ST95–2661 | NORTHERN NATURAL GAS CO. | CIBOLA CORP ..... | 06–08–95 | G–S | 6,000 | N | F | 04–01–95 | 10–31–95 |
| ST95–2662 | NORTHERN NATURAL GAS CO. | TENASKA MARKETING VENTURES. | 06–08–95 | G–S | 20,000 | N | F | 04–01–95 | 03–29–96 |
| ST95–2663 | NORTHERN NATURAL GAS CO. | WESTERN GAS RESOURCES, INC. | 06–08–95 | G–S | 10,000 | N | F | 05–17–95 | 08–31–95 |
| ST95–2664 | NORTHERN NATURAL GAS CO. | SEAGULL MARKETING SERVICES, INC. | 06–08–95 | G–S | 9,600 | N | F | 04–01–95 | 11–29–95 |

| Docket No.[1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity[2] | Aff. Y/A/N[3] | Rate sch. | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST95–2665 | NORTHERN NATURAL GAS CO. | ASSOCIATED GAS SERVICES, INC. | 06–08–95 | G–S | 20,000 | N | F | 04–01–95 | 10–31–95 |
| ST95–2666 | NORTHERN NATURAL GAS CO. | COASTAL GAS MARKETING CO. | 06–08–95 | G–S | 10,000 | N | F | 04–01–95 | 10–31–95 |
| ST95–2667 | NORTHERN NATURAL GAS CO. | CIBOLA CORP ..... | 06–08–95 | G–S | 10,050 | N | F | 04–01–95 | 10–31–95 |
| ST95–2668 | NORTHERN NATURAL GAS CO. | WESTCOAST GAS SERVICES (U.S.A.) INC. | 06–08–95 | G–S | 10,000 | N | F | 04–01–95 | 08–31–95 |
| ST95–2669 | NORTHERN NATURAL GAS CO. | CONAGRA ENERGY SERVICES CO. | 06–08–95 | G–S | 900 | N | F | 04–01–95 | 04–30–95 |
| ST95–2670 | NORTHERN NATURAL GAS CO. | TEXPAR ENERGY INC. | 06–08–95 | G–S | 350 | N | F | 04–01–95 | 07–31–95 |
| ST95–2671 | NORTHERN NATURAL GAS CO. | CIBOLA CORP ..... | 06–08–95 | G–S | 5,025 | N | F | 04–01–95 | 04–30–95 |
| ST95–2672 | TRANSWESTERN PIPELINE CO. | NATIONAL GAS & ELECTRIC L.P. | 06–08–95 | G–S | 2,000 | N | F | 05–01–95 | 05–31–95 |
| ST95–2673 | TRANSWESTERN PIPELINE CO. | RICHARDSON PRODUCTS CO. | 06–08–95 | G–S | 80,000 | N | I | 05–01–95 | 05–31–95 |
| ST95–2674 | TRANSWESTERN PIPELINE CO. | TRISTAR GAS MARKETING CO. | 06–08–95 | G–S | 4,000 | N | F | 02–01–95 | 02–28–95 |
| ST95–2675 | TRANSWESTERN PIPELINE CO. | TECO GAS MARKETING CO. | 06–08–95 | G–S | 15,000 | N | F | 05–01–95 | 05–31–95 |
| ST95–2676 | TRANSWESTERN PIPELINE CO. | NGC TRANSPORTATION INC. | 06–08–95 | G–S | 40,000 | N | F | 05–01–95 | 05–31–95 |
| ST95–2677 | TRANSWESTERN PIPELINE CO. | AMOCO ENERGY TRADING CO. | 06–08–95 | G–S | 12,000 | N | F | 05–01–95 | 05–31–95 |
| ST95–2678 | TRANSWESTERN PIPELINE CO. | PHILLIPS GAS MARKETING CO. | 06–08–95 | G–S | 10,000 | N | F | 05–01–95 | 05–31–95 |
| ST95–2679 | TRANSWESTERN PIPELINE CO. | TRISTAR GAS MARKETING CO. | 06–08–95 | G–S | 30,000 | N | F | 05–01–95 | 05–31–95 |
| ST95–2680 | TRANSWESTERN PIPELINE CO. | WESTERN GAS RESOURCES. | 06–08–95 | G–S | 10,000 | N | F | 05–01–95 | 05–31–95 |
| ST95–2681 | TRANSWESTERN PIPELINE CO. | ENRON CAPITAL & TRADE RESOURCES CO. | 06–08–95 | G–S | 1,000 | Y | F | 05–01–95 | 05–07–95 |
| ST95–2682 | TRANSWESTERN PIPELINE CO. | SAN DIEGO GAS & ELECTRIC CO. | 06–08–95 | B | 10,000 | N | F | 05–01–95 | 05–31–95 |
| ST95–2683 | TRANSWESTERN PIPELINE CO. | SAN DIEGO GAS & ELECTRIC CO. | 06–08–95 | B | 3,000 | N | F | 05–01–95 | 09–30–95 |
| ST95–2684 | TRANSWESTERN PIPELINE CO. | COASTAL GAS MARKETING CO. | 06–08–95 | G–S | 20,000 | N | F | 05–01–95 | 05–31–95 |
| ST95–2685 | TRANSWESTERN PIPELINE CO. | U.S. GAS TRANSPORTATION. | 06–08–95 | G–S | 50,000 | N | I | 03–31–95 | 03–31–97 |
| ST95–2686 | TRANSWESTERN PIPELINE CO. | HIGHLANDS GAS CORP. | 06–08–95 | G–S | 50,000 | N | I | 02–01–95 | 04–30–95 |
| ST95–2687 | TRANSWESTERN PIPELINE CO. | GAS CO. OF NEW MEXICO. | 06–08–95 | B | 80,000 | N | I | 02–01–95 | 02–28–95 |
| ST95–2688 | TRANSWESTERN PIPELINE CO. | WESTERN GAS RESOURCES. | 06–08–95 | G–S | 20,000 | N | I | 02–01–95 | 10–10–95 |
| ST95–2689 | TRANSWESTERN PIPELINE CO. | MERIDIAN OIL TRADING INC. | 06–08–95 | G–S | 300,000 | N | I | 03–03–95 | 12–31–00 |
| ST95–2690 | TRUNKLINE GAS CO. | TEXACO NATURAL GAS, INC. | 06–08–95 | G–S | 50,000 | N | F | 06–01–95 | INDEF. |
| ST95–2691 | SOUTHERN NATURAL GAS CO. | CITY OF SCOTTSBORO. | 06–09–95 | G–S | 1,558 | N | F | 05–10–95 | 10–31–03 |
| ST95–2692 | NORAM GAS TRANSMISSION CO. | COLEMAN CO ..... | 06–12–95 | G–S | 300 | N | F | 05–01–95 | INDEF. |
| ST95–2693 | MOJAVE PIPELINE CO. | SAN DIEGO GAS & ELECTRIC CO. | 06–13–95 | G–S | 10,000 | N | I | 05–17–95 | 10–31–95 |
| ST95–2694 | QUESTAR PIPELINE CO. | VESGAS CO ..... | 06–13–95 | G–S | 880 | N | F | 06–01–95 | 09–30–95 |
| ST95–2695 | FLORIDA GAS TRANSMISSION CO. | CNB/OLYMPIC GAS SERVICES. | 06–13–95 | G–S | 50,000 | N | I | 05–13–95 | INDEF. |
| ST95–2696 | PANHANDLE EASTERN PIPE LINE CO. | US GYPSUM ..... | 06–13–95 | G–S | 5,000 | N | F | 06–01–95 | 10–31–95 |
| ST95–2697 | PANHANDLE EASTERN PIPE LINE CO. | AIG TRADING CORP. | 06–13–95 | G–S | 5,000 | N | F | 06–01–95 | 10–31–95 |

| Docket No.[1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity[2] | Aff. Y/A/N[3] | Rate sch. | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST95–2698 | PANHANDLE EASTERN PIPE LINE CO. | CONTINENTAL ENERGY MARKETING, INC. | 06–13–95 | G–S | 10,000 | N | I | 06–01–95 | 03–31–97 |
| ST95–2699 | PANHANDLE EASTERN PIPE LINE CO. | ANADARKO PETROLEUM CORP. | 06–13–95 | G–S | 35,000 | N | F | 06–01–95 | 06–30–95 |
| ST95–2700 | PANHANDLE EASTERN PIPE LINE CO. | WESTCOAST GAS SERVICES (U.S.A.). | 06–13–95 | G–S | 10,000 | N | F | 06–01–95 | 06–30–95 |
| ST95–2701 | PANHANDLE EASTERN PIPE LINE CO. | KCS ENERGY MARKETING, INC. | 06–13–95 | G–S | 50,000 | N | I | 06–01–95 | 03–31–97 |
| ST95–2702 | PANHANDLE EASTERN PIPE LINE CO. | COASTAL GAS MARKETING CO. | 06–13–95 | G–S | 7,332 | N | F | 06–01–95 | 06–30–95 |
| ST95–2703 | PANHANDLE EASTERN PIPE LINE CO. | COWEST ENERGY . | 06–13–95 | G–S | 7,790 | N | F | 06–01–95 | 06–30–95 |
| ST95–2704 | PANHANDLE EASTERN PIPE LINE CO. | AQUILA ENERGY MARKETING CORP. | 06–13–95 | G–S | 5,083 | N | F | 06–01–95 | 06–30–95 |
| ST95–2705 | WILLIAMS NATURAL GAS CO. | ASSOCIATED NATURAL GAS, INC. | 06–13–95 | G–S | 50,000 | N | I | 04–28–95 | 09–30–98 |
| ST95–2706 | NORTHERN NATURAL GAS CO. | KAZTEX ENERGY MANAGEMENT, INC. | 06–14–95 | G–S | 3,000 | N | F | 04–01–95 | 10–31–95 |
| ST95–2707 | NORTHERN NATURAL GAS CO. | CIBOLA CORP ..... | 06–14–95 | G–S | 10,000 | N | I | 04–01–95 | INDEF. |
| ST95–2708 | NORTHERN NATURAL GAS CO. | OASIS PIPELINE CO | 06–14–95 | B | 3,000 | Y | F | 04–01–95 | 04–30–95 |
| ST95–2709 | NORTHERN NATURAL GAS CO. | ENRON CAPITAL & TRADE RESOURCES CO. | 06–14–95 | G–S | 6,000 | Y | F | 04–01–95 | 06–30–95 |
| ST95–2710 | NORTHERN NATURAL GAS CO. | NORAM HUB SERVICES, INC. | 06–14–95 | G–S | 40,000 | N | F | 04–01–95 | 03–30–96 |
| ST95–2711 | NORTHERN NATURAL GAS CO. | KCS ENERGY MARKETING, INC. | 06–14–95 | G–S | 10,000 | N | F | 04–01–95 | 09–30–95 |
| ST95–2712 | NORTHERN NATURAL GAS CO. | WATERTOWN MUNICIPAL UTILITIES DEPT. | 06–14–95 | B/G–S | 2,000 | N | F | 04–01–95 | 04–30–95 |
| ST95–2713 | NORTHERN NATURAL GAS CO. | AMERADA HESS CORP. | 06–14–95 | G–S | 30,000 | N | F | 04–01–95 | 10–31–95 |
| ST95–2714 | COLUMBIA GAS TRANSMISSION CORP. | TRANSPORT GAS CORP. | 06–14–95 | G–S | 100,000 | N | I | 06–01–95 | INDEF. |
| ST95–2715 | COLUMBIA GAS TRANSMISSION CORP. | ENERGY DEVELOPMENT CORP. | 06–14–95 | G–S | 50,000 | N | I | 06–01–95 | INDEF. |
| ST95–2716 | COLUMBIA GAS TRANSMISSION CORP. | GAS TRANSPORT, INC. | 06–14–95 | G–S | 1,000 | N | I | 06–01–95 | INDEF. |
| ST95–2717 | COLUMBIA GAS TRANSMISSION CORP. | ENERGY DEVELOPMENT CORP. | 06–14–95 | G–S | 50,000 | N | I | 06–01–95 | INDEF. |
| ST95–2718 | COLUMBIA GAS TRANSMISSION CORP. | BELDEN & BLAKE CORP. | 06–14–95 | G–S | 1,000 | N | I | 06–01–95 | INDEF. |
| ST95–2719 | COLUMBIA GAS TRANSMISSION CORP. | ENERGY SOURCE, INC. | 06–14–95 | G–S | 40,000 | N | I | 06–01–95 | INDEF. |
| ST95–2720 | COLUMBIA GAS TRANSMISSION CORP. | CENERGY, INC ..... | 06–14–95 | G–S | 10,000 | N | F | 06–01–95 | 10–31–95 |
| ST95–2721 | COLUMBIA GAS TRANSMISSION CORP. | COLUMBIA ENERGY SERVICES CORP. | 06–14–95 | G–S | 14,400 | N | F | 06–01–95 | 10–31–95 |
| ST95–2722 | COLUMBIA GAS TRANSMISSION CORP. | EASTERN MARKETING CORP. | 06–14–95 | G–S | 50 | N | F | 06–01–95 | INDEF. |
| ST95–2723 | COLUMBIA GAS TRANSMISSION CORP. | NGC TRANSPORTATION, INC. | 06–14–95 | G–S | 10,000 | N | F | 06–01–95 | 10–31–95 |

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|---|---|---|---|---|---|---|---|---|---|
| ST95–2724 | SEA ROBIN PIPELINE CO. | CAIRN ENERGY USA INC. | 06–14–95 | G–S | 30,000 | Y | I | 06–01–95 | INDEF. |
| ST95–2725 | SEA ROBIN PIPELINE CO. | CHEVRON U.S.A. INC. | 06–14–95 | G–S | 600,000 | Y | I | 05–25–95 | INDEF. |
| ST95–2726 | SOUTHERN NATURAL GAS CO. | CITY OF MEIGS ..... | 06–14–95 | G–S | 50 | N | F | 06–01–95 | 10–31–96 |
| ST95–2727 | SOUTHERN NATURAL GAS CO. | CITY OF DOERUN .. | 06–14–95 | G–S | 75 | N | F | 06–01–95 | 10–31–96 |
| ST95–2728 | SOUTHERN NATURAL GAS CO. | CITY OF LUMPKIN .. | 06–14–95 | G–S | 50 | N | F | 06–01–95 | 10–31–96 |
| ST95–2729 | SOUTHERN NATURAL GAS CO. | CITY OF GRANTVILLE. | 06–14–95 | G–S | 100 | N | F | 06–01–95 | 10–31–96 |
| ST95–2730 | SOUTHERN NATURAL GAS CO. | CITY OF EATONTON. | 06–14–95 | G–S | 750 | N | F | 06–01–95 | 10–31–96 |
| ST95–2731 | SOUTHERN NATURAL GAS CO. | CITY OF DONALSONVILLE. | 06–14–95 | G–S | 91 | N | F | 06–01–95 | 10–31–96 |
| ST95–2732 | SOUTHERN NATURAL GAS CO. | CITY OF EDISON .... | 06–14–95 | G–S | 91 | N | F | 06–01–95 | 10–31–96 |
| ST95–2733 | SOUTHERN NATURAL GAS CO. | CITY OF HOGANSVILLE. | 06–14–95 | G–S | 450 | N | F | 06–01–95 | 12–31–05 |
| ST95–2734 | SOUTHERN NATURAL GAS CO. | NGC TRANSPORTATION INC. | 06–14–95 | G–S | 30,000 | N | I | 06–01–95 | 06–30–95 |
| ST95–2735 | SOUTHERN NATURAL GAS CO. | CITY OF NASHVILLE. | 06–14–95 | G–S | 181 | N | F | 06–01–95 | 10–04–97 |
| ST95–2736 | SOUTHERN NATURAL GAS CO. | TOWN OF TRION .... | 06–14–95 | G–S | 1,375 | N | F | 06–01–95 | 12–31–05 |
| ST95–2737 | SOUTHERN NATURAL GAS CO. | GGR ENERGY CO .. | 06–14–95 | G–S | 10,000 | N | I | 06–04–95 | 05–31–96 |
| ST95–2738 | SOUTHERN NATURAL GAS CO. | CITY OF CLAXTON . | 06–14–95 | G–S | 265 | N | F | 06–01–95 | 10–31–96 |
| ST95–2739 | SOUTHERN NATURAL GAS CO. | CITY OF ADAIRSVILLE. | 06–14–95 | G–S | 409 | N | F | 06–01–95 | 12–31–05 |
| ST95–2740 | SOUTHERN NATURAL GAS CO. | CITY OF MONTICELLO. | 06–14–95 | G–S | 520 | N | F | 06–01–95 | 12–31–05 |
| ST95–2741 | SOUTHERN NATURAL GAS CO. | TOWN OF TRION .... | 06–14–95 | G–S | 256 | N | F | 06–03–95 | 10–31–95 |
| ST95–2742 | SOUTHERN NATURAL GAS CO. | CITY OF UNADILLA | 06–14–95 | G–S | 170 | N | F | 06–01–95 | 10–31–96 |
| ST95–2743 | SOUTHERN NATURAL GAS CO. | TEXACO GAS MARKETING. | 06–14–95 | G–S | 20,000 | N | I | 06–01–95 | 06–30–95 |
| ST95–2744 | SOUTHERN NATURAL GAS CO. | CITY OF SPARTA ... | 06–14–95 | G–S | 295 | N | F | 06–01–95 | 12–31–05 |
| ST95–2745 | SOUTHERN NATURAL GAS CO. | CITY OF QUINCY .... | 06–14–95 | G–S | 625 | N | F | 06–01–95 | 10–31–96 |
| ST95–2746 | SOUTHERN NATURAL GAS CO. | CITY OF WAYNESBORO. | 06–14–95 | G–S | 550 | N | F | 06–01–95 | 12–31–05 |
| ST95–2747 | SOUTHERN NATURAL GAS CO. | CITY OF CLAXTON . | 06–14–95 | G–S | 645 | N | F | 05–27–95 | 10–31–96 |
| ST95–2748 | SOUTHERN NATURAL GAS CO. | CITY OF OCILLA ..... | 06–14–95 | G–S | 75 | N | F | 06–01–95 | 10–31–96 |
| ST95–2749 | SOUTHERN NATURAL GAS CO. | CITY OF MILLEN ..... | 06–14–95 | G–S | 225 | N | F | 06–01–95 | 12–31–05 |
| ST95–2750 | SOUTHERN NATURAL GAS CO. | CITY OF CLAXTON . | 06–14–95 | G–S | 515 | N | F | 06–01–95 | 10–31–96 |
| ST95–2751 | SOUTHERN NATURAL GAS CO. | CITY OF QUINCY .... | 06–14–95 | G–S | 1,507 | N | F | 06–01–95 | 10–31–96 |
| ST95–2752 | SOUTHERN NATURAL GAS CO. | CITY OF WAYNESBORO. | 06–14–95 | G–S | 1,226 | N | F | 06–01–95 | 10–31–95 |
| ST95–2753 | SOUTHERN NATURAL GAS CO. | CITY OF TRION ..... | 06–14–95 | G–S | 760 | N | F | 06–01–95 | 10–31–95 |
| ST95–2754 | SOUTHERN NATURAL GAS CO. | CITY OF LAWRENCEVILLE. | 06–14–95 | G–S | 4,000 | N | F | 06–01–95 | 04–30–07 |
| ST95–2755 | SOUTHERN NATURAL GAS CO. | DEKALB-CHEROKEE COUNTIES GAS DIST. | 06–14–95 | G–S | 3,613 | N | F | 06–02–95 | 10–31–99 |
| ST95–2756 | SOUTHERN NATURAL GAS CO. | NATIONAL GAS & ELECTRIC L.P. | 06–14–95 | G–S | 50,000 | N | I | 06–03–95 | 05–31–96 |
| ST95–2757 | SOUTHERN NATURAL GAS CO. | CITY OF WEST POINT. | 06–14–95 | G–S | 1,277 | N | F | 06–01–95 | 10–31–96 |
| ST95–2758 | SOUTHERN NATURAL GAS CO. | DEKALB-CHEROKEE COUNTIES GAS DIST. | 06–14–95 | G–S | 2,044 | N | F | 06–01–95 | 10–31–99 |

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|---|---|---|---|---|---|---|---|---|---|
| ST95–2759 | SOUTHERN NATURAL GAS CO. | CITY OF COCHRAN | 06–14–95 | G–S | 741 | N | F | 06–01–95 | 12–31–05 |
| ST95–2760 | SOUTHERN NATURAL GAS CO. | CITY OF WEST POINT. | 06–14–95 | G–S | 500 | N | F | 06–01–95 | 10–31–96 |
| ST95–2761 | SOUTHERN NATURAL GAS CO. | CITY OF CAIRO ..... | 06–14–95 | G–S | 495 | N | F | 06–01–95 | 10–31–96 |
| ST95–2762 | SOUTHERN NATURAL GAS CO. | CITY OF COLQUITT | 06–14–95 | G–S | 67 | N | F | 06–01–95 | 10–31–95 |
| ST95–2763 | SOUTHERN NATURAL GAS CO. | CITY OF WOODLAND. | 06–14–95 | G–S | 20 | N | F | 06–01–95 | 10–31–96 |
| ST95–2764 | MIDWESTERN GAS TRANSMISSION CO. | MOBIL NATURAL GAS, INC.. | 06–15–95 | G–S | 2,000 | N | F | 06–01–95 | INDEF. |
| ST95–2765 | MISSISSIPPI RIVER TRANS. CORP. | UNION PACIFIC CORP. | 06–15–95 | G–S | 2 | N | F | 05–16–95 | INDEF. |
| ST95–2766 | MISSISSIPPI RIVER TRANS. CORP. | BIG RIVER ZINC CORP. | 06–15–95 | G–S | 80 | N | F | 05–16–95 | INDEF. |
| ST95–2767 | MISSISSIPPI RIVER TRANS. CORP. | RHEOX, INC ..... | 06–15–95 | G–S | 66 | N | F | 05–16–95 | INDEF. |
| ST95–2768 | MISSISSIPPI RIVER TRANS. CORP. | CITY OF RED BUD . | 06–15–95 | G–S | 258 | N | F | 05–16–95 | INDEF. |
| ST95–2769 | MISSISSIPPI RIVER TRANS. CORP. | UNION GAS CO ..... | 06–15–95 | G–S | 10 | N | F | 05–16–95 | INDEF. |
| ST95–2770 | MISSISSIPPI RIVER TRANS. CORP. | UNITED CITIES GAS CO. | 06–15–95 | G–S | 133 | N | F | 05–16–95 | INDEF. |
| ST95–2771 | MISSISSIPPI RIVER TRANS. CORP. | CITY OF AUGUSTA | 06–15–95 | G–S | 230 | N | F | 05–16–95 | INDEF. |
| ST95–2772 | MISSISSIPPI RIVER TRANS. CORP. | HARCROS PIGMENTS, INC. | 06–15–95 | G–S | 165 | N | F | 05–16–95 | INDEF. |
| ST95–2773 | MISSISSIPPI RIVER TRANS. CORP. | LA ROCHE INDUSTRIES, INC. | 06–15–95 | G–S | 120 | N | F | 05–16–95 | INDEF. |
| ST95–2774 | MISSISSIPPI RIVER TRANS. CORP. | STERLING STEEL FOUNDRY. | 06–15–95 | G–S | 9 | N | F | 05–16–95 | INDEF. |
| ST95–2775 | MISSISSIPPI RIVER TRANS. CORP. | CITY OF DES ARC .. | 06–15–95 | G–S | 129 | N | F | 05–16–95 | INDEF. |
| ST95–2776 | MISSISSIPPI RIVER TRANS. CORP. | VILLAGE OF DUPO . | 06–15–95 | G–S | 264 | N | F | 05–16–95 | INDEF. |
| ST95–2777 | MISSISSIPPI RIVER TRANS. CORP. | CITY OF POTOSI .... | 06–15–95 | G–S | 516 | N | F | 05–16–95 | INDEF. |
| ST95–2778 | MISSISSIPPI RIVER TRANS. CORP. | LACLEDE STEEL CO.. | 06–15–95 | G–S | 2,000 | N | F | 05–16–95 | INDEF. |
| ST95–2779 | MISSISSIPPI RIVER TRANS. CORP. | CITY OF WATERLOO. | 06–15–95 | G–S | 504 | N | F | 05–16–95 | INDEF. |
| ST95–2780 | MISSISSIPPI RIVER TRANS. CORP. | GENERAL CHEMICAL CORP. | 06–15–95 | G–S | 58 | N | F | 05–16–95 | INDEF. |
| ST95–2781 | MISSISSIPPI RIVER TRANS. CORP. | SPECTRULITE CONSORTIUM, INC. | 06–15–95 | G–S | 314 | N | F | 05–16–95 | INDEF. |
| ST95–2782 | MISSISSIPPI RIVER TRANS. CORP. | AMERICAN STEEL FOUNDRIES. | 06–15–95 | G–S | 174 | N | F | 05–16–95 | INDEF. |
| ST95–2783 | MISSISSIPPI RIVER TRANS. CORP. | CITY OF BISMARCK | 06–15–95 | G–S | 159 | N | F | 05–16–95 | INDEF. |
| ST95–2784 | MISSISSIPPI RIVER TRANS. CORP. | CERRO COPPER PRODUCTS CO. | 06–15–95 | G–S | 363 | N | F | 05–16–95 | INDEF. |
| ST95–2785 | MISSISSIPPI RIVER TRANS. CORP. | ASSOCIATED NATURAL GAS CO. | 06–15–95 | G–S | 532 | N | F | 05–16–95 | INDEF. |
| ST95–2786 | MISSISSIPPI RIVER TRANS. CORP. | ARNOLD MUFFLER CO. | 06–15–95 | G–S | 2 | N | F | 05–16–95 | INDEF. |
| ST95–2787 | MISSISSIPPI RIVER TRANS. CORP. | CITY OF HAZEN ..... | 06–15–95 | G–S | 160 | N | F | 05–16–95 | INDEF. |
| ST95–2788 | MISSISSIPPI RIVER TRANS. CORP. | MISSISSIPPI LIME CO | 06–15–95 | G–S | 605 | N | F | 05–16–95 | INDEF. |
| ST95–2789 | MISSISSIPPI RIVER TRANS. CORP. | CITY OF CHESTER . | 06–15–95 | G–S | 586 | N | F | 05–16–95 | INDEF. |
| ST95–2790 | MISSISSIPPI RIVER TRANS. CORP. | NATURAL GAS IMPROVEMENT DISTRICT. | 06–15–95 | G–S | 115 | N | F | 05–16–95 | INDEF. |
| ST95–2791 | MISSISSIPPI RIVER TRANS. CORP. | NESCO STEEL BARREL CO. | 06–15–95 | G–S | 17 | N | F | 05–16–95 | INDEF. |
| ST95–2792 | MISSISSIPPI RIVER TRANS. CORP. | NATIONAL STEEL CORP. | 06–15–95 | G–S | 4,223 | N | F | 05–16–95 | INDEF. |

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| ST95–2793 | MISSISSIPPI RIVER TRANS. CORP. | JEFFERSON SMURFIT CORP. | 06–15–95 | G–S | 13 | N | F | 05–16–95 | INDEF. |
| ST95–2794 | MISSISSIPPI RIVER TRANS. CORP. | DOE RUN CO ..... | 06–15–95 | G–S | 235 | N | F | 05–16–95 | INDEF. |
| ST95–2795 | ANR PIPELINE CO .. | HUNT OIL CO ..... | 06–16–95 | G–S | N/A | N | F | 05–01–95 | INDEF. |
| ST95–2796 | ANR PIPELINE CO .. | INDECK-CORINTH LTD PARTNERSHIP. | 06–16–95 | G–S | N/A | N | I | 05–13–95 | INDEF. |
| ST95–2797 | ANR PIPELINE CO .. | AMERICAN CENTRAL GAS CO. | 06–16–95 | G–S | 164 | N | F | 05–01–95 | INDEF. |
| ST95–2798 | ANR PIPELINE CO .. | CMS NOMECO OIL & GAS CO. | 06–16–95 | G–S | N/A | N | I | 05–02–95 | INDEF. |
| ST95–2799 | ANR PIPELINE CO .. | UNION PACIFIC FUELS INC. | 06–16–95 | G–S | N/A | N | I | 05–09–95 | INDEF. |
| ST95–2800 | ANR PIPELINE CO .. | WICKFORD ENERGY MKTG. | 06–16–95 | G–S | N/A | N | F | 05–01–95 | INDEF. |
| ST95–2801 | TENNESSEE GAS PIPELINE CO. | CONNECTICUT NATURAL GAS CORP. | 06–19–95 | G–S | 13,884 | N | F | 06–01–95 | INDEF. |
| ST95–2802 | TENNESSEE GAS PIPELINE CO. | ORYX GAS MARKETING LIMITED PART. | 06–19–95 | G–S | 4 | N | F | 06–01–95 | INDEF. |
| ST95–2803 | TENNESSEE GAS PIPELINE CO. | TECO GAS MARKETING CO. | 06–19–95 | G–S | 70,000 | N | I | 06–01–95 | INDEF. |
| ST95–2804 | WILLISTON BASIN INT. P/L CO. | KOCH GAS SERVICES CO. | 06–19–95 | G–S | 30,000 | A | I | 05–19–95 | 04–30–97 |
| ST95–2805 | WILLISTON BASIN INT. P/L CO. | KOCH GAS SERVICES CO. | 06–19–95 | G–S | 30,000 | A | I | 05–19–95 | 04–30–97 |
| ST95–2806 | WILLISTON BASIN INT. P/L CO. | KOCH GAS SERVICES CO. | 06–19–95 | G–S | 30,000 | A | I | 05–19–95 | 04–30–97 |
| ST95–2807 | WILLISTON BASIN INT. P/L CO. | KOCH GAS SERVICES CO. | 06–19–95 | G–S | 30,000 | A | I | 05–19–95 | 04–30–97 |
| ST95–2808 | WILLISTON BASIN INT. P/L CO. | KOCH GAS SERVICES CO. | 06–19–95 | G–S | 30,000 | A | I | 05–19–95 | 04–30–97 |
| ST95–2809 | WILLISTON BASIN INT. P/L CO. | KOCH GAS SERVICES CO. | 06–19–95 | G–S | 30,000 | A | I | 05–19–95 | 04–30–97 |
| ST95–2810 | WILLISTON BASIN INT. P/L CO. | KOCH GAS SERVICES CO. | 06–19–95 | G–S | 30,000 | A | I | 05–19–95 | 04–30–97 |
| ST95–2811 | WILLISTON BASIN INT. P/L CO. | KOCH GAS SERVICES CO. | 06–19–95 | G–S | 30,000 | A | I | 05–19–95 | 04–30–97 |
| ST95–2812 | WILLISTON BASIN INT. P/L CO. | KOCH GAS SERVICES CO. | 06–19–95 | G–S | 30,000 | A | I | 05–19–95 | 04–30–97 |
| ST95–2813 | WILLISTON BASIN INT. P/L CO. | KOCH GAS SERVICES CO. | 06–19–95 | G–S | 30,000 | A | I | 05–19–95 | 04–30–97 |
| ST95–2814 | WILLISTON BASIN INT. P/L CO. | WBI GAS SERVICES CO. | 06–19–95 | G–S | 200,000 | A | I | 05–19–95 | 05–14–97 |
| ST95–2815 | TENNESSEE GAS PIPELINE CO. | TECO GAS MARKETING CO. | 06–20–95 | G–S | 4 | N | F | 05–01–95 | INDEF. |
| ST95–2816 | KERN RIVER GAS TRANSMISSION CO. | NEVADA POWER CO. | 06–21–95 | G–S | 20,000 | N | F | 06–01–95 | 8–31–95 |
| ST95–2817 | NATIONAL FUEL GAS SUPPLY CORP. | NATIONAL FUEL RESOURCES, INC. | 06–21–95 | B | 35,000 | A | I | 06–01–94 | 05–31–14 |
| ST95–2818 | NATIONAL FUEL GAS SUPPLY CORP. | NORTH AMERICAN ENERGY, INC. | 06–21–95 | G–S | 10,000 | N | I | 11–30–94 | 7–11–04 |
| ST95–2819 | NATIONAL FUEL GAS SUPPLY CORP. | ELLISBURG-LEIDY NORTHEAST HUB CO. | 06–21–95 | G–S | 100,000 | A | I | 05–01–95 | 05–01–05 |
| ST95–2820 | NATIONAL FUEL GAS SUPPLY CORP. | ELLISBURG-LEIDY NORTHEAST HUB CO. | 06–21–95 | G–S | 100,000 | A | I | 05–01–95 | 05–01–05 |
| ST95–2821 | CNG TRANSMISSION CORP. | TRW VALVE DIVISION. | 06–21–95 | G–S | 3,000 | N | I | 06–15–95 | 7–31–95 |
| ST95–2822 | SABINE PIPE LINE CO. | PINNACLE ENERGY CO. | 06–22–95 | G–S | 30,000 | N | I | 06–01–95 | INDEF. |
| ST95–2823 | K N INTERSTATE GAS TRANS. CO. | LOUISIANA LAND AND EXPLORATION CO. | 06–22–95 | G–S | 15,000 | N | I | 06–01–95 | INDEF. |

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| ST95–2824 | VALERO TRANSMISSION, L.P. | KOCH GATEWAY PIPELINE CO. | 06–23–95 | C | 10,000 | N | I | 06–01–95 | INDEF. |
| ST95–2825 | VALERO TRANSMISSION, L.P. | EL PASO NATURAL GAS CO, ET AL. | 06–23–95 | C | 10,000 | N | I | 06–01–95 | INDEF. |
| ST95–2826 | TEXAS EASTERN TRANSMISSION CORP. | UNITED CITIES GAS CO. | 06–23–95 | G–S | 3,500 | N | F | 06–01–95 | INDEF. |
| ST95–2827 | WILLISTON BASIN INT. P/L CO. | KOCH GAS SERVICES CO. | 06–23–95 | G–S | 30,000 | A | I | 05–25–95 | 04–30–97 |
| ST95–2828 | WILLISTON BASIN INT. P/L CO. | KOCH GAS SERVICES CO. | 06–23–95 | G–S | 30,000 | A | I | 05–25–95 | 04–30–97 |
| ST95–2829 | WILLISTON BASIN INT. P/L CO. | KOCH GAS SERVICES CO. | 06–23–95 | G–S | 30,000 | A | I | 05–25–95 | 04–30–97 |
| ST95–2830 | WILLISTON BASIN INT. P/L CO. | KOCH GAS SERVICES CO. | 06–23–95 | G–S | 30,000 | A | I | 05–25–95 | 04–30–97 |
| ST95–2831 | WILLISTON BASIN INT. P/L CO. | KOCH GAS SERVICES CO. | 06–23–95 | G–S | 30,000 | A | I | 05–25–95 | 04–30–97 |
| ST95–2832 | WILLISTON BASIN INT. P/L CO. | KOCH GAS SERVICES CO. | 06–23–95 | G–S | 30,000 | A | I | 05–25–95 | 04–30–97 |
| ST95–2833 | WILLISTON BASIN INT. P/L CO. | KOCH GAS SERVICES CO. | 06–23–95 | G–S | 30,000 | A | I | 05–25–95 | 04–30–97 |
| ST95–2834 | WILLISTON BASIN INT. P/L CO. | KOCH GAS SERVICES CO. | 06–23–95 | G–S | 30,000 | A | I | 05–25–95 | 04–30–97 |
| ST95–2835 | TRANSWESTERN PIPELINE CO.. | MOBIL NATURAL GAS, INC. | 06–26–95 | G–S | 3,800 | N | F | 06–01–95 | 06–30–95 |
| ST95–2836 | TRANSWESTERN PIPELINE CO. | TRISTAR GAS MARKETING CO. | 06–26–95 | B | 10,000 | N | F | 06–01–95 | 8–31–95 |
| ST95–2837 | TRANSWESTERN PIPELINE CO. | PENNUNION ENERGY SERVICES, L.L.C. | 06–26–95 | G–S | 10,000 | N | F | 06–01–95 | 06–30–95 |
| ST95–2838 | TRANSWESTERN PIPELINE CO. | NGC TRANSPORTATION, INC. | 06–26–95 | G–S | 35,000 | N | F | 06–01–95 | 06–30–95 |
| ST95–2839 | TRANSWESTERN PIPELINE CO. | PHILLIPS GAS MARKETING CO. | 06–26–95 | G–S | 10,000 | N | F | 06–01–95 | 06–30–95 |
| ST95–2840 | TRANSWESTERN PIPELINE CO. | ASSOCIATED GAS SERVICES, INC. | 06–26–95 | G–S | 9,300 | N | F | 06–01–95 | 06–30–95 |
| ST95–2841 | TRANSWESTERN PIPELINE CO. | NATIONAL GAS & ELECTRIC L.P. | 06–26–95 | G–S | 5,000 | N | F | 06–01–95 | 06–30–95 |
| ST95–2842 | TRANSWESTERN PIPELINE CO. | VASTAR GAS MARKETING, INC. | 06–26–95 | B | 10,000 | N | F | 06–01–95 | 06–30–95 |
| ST95–2843 | TRANSWESTERN PIPELINE CO. | VASTAR GAS MARKETING, INC. | 06–26–95 | B | 30,000 | N | F | 06–01–95 | 06–30–95 |
| ST95–2844 | TRANSWESTERN PIPELINE CO. | NGC TRANSPORTATION INC. | 06–26–95 | G–S | 10,000 | N | F | 06–01–95 | 06–30–95 |
| ST95–2845 | TRANSWESTERN PIPELINE CO. | AMOCO ENERGY TRADING CORP. | 06–26–95 | G–S | 12,000 | N | F | 06–01–95 | 06–30–95 |
| ST95–2846 | TRANSWESTERN PIPELINE CO. | AQUILA ENERGY MARKETING CORP. | 06–26–95 | G–S | 10,000 | N | F | 06–01–95 | 06–30–95 |
| ST95–2847 | TRANSWESTERN PIPELINE CO. | TRISTAR GAS MARKETING CO. | 06–26–95 | B | 10,000 | N | F | 06–01–95 | 06–30–95 |
| ST95–2848 | TRANSWESTERN PIPELINE CO. | TRISTAR GAS MARKETING CO. | 06–26–95 | B | 10,000 | N | F | 06–01–95 | 06–30–95 |
| ST95–2849 | NORAM GAS TRANSMISSION CO. | AES/SHADY POINT, INC. | 06–26–95 | G–S | 300 | N | I | 09–01–93 | INDEF. |
| ST95–2850 | CONSUMERS POWER CO. | MICHIGAN GAS STORAGE CO, ET AL. | 06–26–95 | G–HT | 12,000 | Y | I | 06–16–95 | INDEF. |
| ST95–2851 | MICHIGAN GAS STORAGE CO. | CONSUMERS POWER CO. | 06–26–95 | B | 12,000 | Y | I | 06–16–95 | INDEF. |
| ST95–2852 | VALERO TRANSMISSION, L.P. | NATURAL GAS PIPELINE CO OF AMERICA. | 06–27–95 | C | 20,000 | N | I | 06–01–95 | 06–01–96 |
| ST95–2853 | EL PASO NATURAL GAS CO. | RICHARDSON PRODUCTS II, LTD. | 06–27–95 | G–S | 50,000 | N | I | 05–01–95 | INDEF. |
| ST95–2854 | COLORADO INTERSTATE GAS CO. | RAMPART GAS SERVICES, INC. | 06–27–95 | G–S | 2,295 | N | F | 06–01–95 | 07–03–95 |
| ST95–2855 | EL PASO NATURAL GAS CO. | FINA NATURAL GAS CO. | 06–27–95 | G–S | 77,250 | N | I | 05–01–95 | INDEF. |

| Docket No.[1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity[2] | Aff. Y/A/N[3] | Rate sch. | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST95–2856 | ALGONQUIN GAS TRANSMISSION CO. | BOSTON EDISON CO. | 06–27–95 | B | 100 | N | F | 06–01–95 | 06–30–95 |
| ST95–2857 | TENNESSEE GAS PIPELINE CO. | CENTRAL HUDSON GAS & ELECTRIC CORP. | 06–27–95 | G–S | 4,659 | N | F | 06–01–95 | INDEF. |
| ST95–2858 | TENNESSEE GAS PIPELINE CO. | RENAISSANCE ENERGY (U.S.) INC. | 06–27–95 | G–S | 40,000 | N | I | 06–02–95 | INDEF. |
| ST95–2859 | TENNESSEE GAS PIPELINE CO. | TRANSCO GAS MARKETING CO. | 06–27–95 | G–S | 4 | N | F | 06–01–95 | INDEF. |
| ST95–2860 | MIDWESTERN GAS TRANSMISSION CO. | SOUTHERN INDIANA GAS & ELECTRIC. | 06–27–95 | G–S | 3,980 | N | F | 06–01–95 | INDEF. |
| ST95–2861 | KERN RIVER GAS TRANSMISSION CO. | IGI RESOURCES, INC. | 06–27–95 | G–S | 10,000 | N | I | 06–11–95 | INDEF. |
| ST95–2862 | ACADIAN GAS PIPELINE SYSTEM. | NATURAL GAS P/L OF AMERICA, ET AL. | 06–28–95 | C | 20,000 | N | I | 04–01–95 | 03–30–96 |
| ST95–2863 | NORTHERN NATURAL GAS CO. | HUTCHINSON UTILITIES COMMISSION. | 06–28–95 | G–S | 540,000 | N | I | 06–05–95 | INDEF. |
| ST95–2864 | NORTHERN NATURAL GAS CO. | CIBOLA CORP ..... | 06–28–95 | G–S | 20,060 | N | F | 04–22–95 | 04–30–95 |
| ST95–2865 | NORTHERN NATURAL GAS CO. | ARMOUR SWIFT-ECKRICH, INC. | 06–28–95 | G–S | 195 | N | F | 06–01–95 | 10–31–97 |
| ST95–2866 | NORTHERN NATURAL GAS CO. | HIGHLANDS GATHERING & PROCESSING CO. | 06–28–95 | G–S | 50,000 | N | I | 06–01–95 | INDEF. |
| ST95–2867 | NORTHERN NATURAL GAS CO. | COKINOS NATURAL GAS CO. | 06–28–95 | G–S | 20,000 | N | I | 06–01–95 | INDEF. |
| ST95–2868 | NORTHERN NATURAL GAS CO. | NATIONAL GAS & ELECTRIC L.P. | 06–28–95 | G–S | 4,700 | N | F | 06–01–95 | 07–31–95 |
| ST95–2869 | SABINE PIPE LINE CO. | CONOCO, INC ..... | 06–29–95 | G–S | 100,000 | N | I | 02–01–95 | INDEF. |
| ST95–2870 | TENNESSEE GAS PIPELINE CO. | VALLEY GAS CO .... | 06–29–95 | G–S | 5,180 | N | F | 06–01–95 | INDEF. |
| ST95–2871 | TENNESSEE GAS PIPELINE CO. | TORCH GAS, LC ..... | 06–29–95 | G–S | 4 | N | F | 06–01–95 | INDEF. |
| ST95–2872 | TENNESSEE GAS PIPELINE CO. | JOSEPH ENERGY INC. | 06–29–95 | G–S | 4 | N | F | 06–01–95 | INDEF. |
| ST95–2873 | TENNESSEE GAS PIPELINE CO. | ESSEX COUNTY GAS CO. | 06–29–95 | G–S | 4,069 | N | F | 06–01–95 | INDEF. |
| ST95–2874 | PANHANDLE EASTERN PIPE LINE CO. | ANADARKO TRADING CO. | 06–29–95 | G–S | 242,000 | N | F | 06–01–95 | 11–30–95 |
| ST95–2875 | TRANSWESTERN PIPELINE CO. | NGC TRANSPORTATION INC. | 06–29–95 | G–S | 5,000 | N | F | 06–10–95 | 06–12–95 |
| ST95–2876 | TRANSWESTERN PIPELINE CO. | NGC TRANSPORTATION INC. | 06–29–95 | G–S | 5,000 | N | F | 06–13–95 | 06–17–95 |
| ST95–2877 | TRANSWESTERN PIPELINE CO. | NGC TRANSPORTATION INC. | 06–29–95 | G–S | 5,000 | N | F | 06–09–95 | 06–09–95 |
| ST95–2878 | TRANSWESTERN PIPELINE CO. | RICHARDSON PRODUCTS CO. | 06–29–95 | G–S | 5,000 | N | F | 06–07–95 | 06–30–95 |
| ST95–2879 | TRANSWESTERN PIPELINE CO. | TECO GAS MARKETING INC. | 06–29–95 | G–S | 10,000 | N | F | 06–01–95 | 08–31–95 |
| ST95–2880 | TRANSWESTERN PIPELINE CO. | MERIDIAN OIL TRADING INC. | 06–29–95 | G–S | 5,000 | N | F | 06–01–95 | 02–29–00 |
| ST95–2881 | TRANSWESTERN PIPELINE CO. | RICHARDSON PRODUCTS CO. | 06–29–95 | G–S | 35,700 | N | F | 06–01–95 | 05–31–01 |
| ST95–2882 | TRANSWESTERN PIPELINE CO. | COASTAL GAS MARKETING CO. | 06–29–95 | G–S | 10,000 | N | F | 06–01–95 | 10–31–95 |
| ST95–2883 | TRANSWESTERN PIPELINE CO. | COASTAL GAS MARKETING CO. | 06–29–95 | G–S | 10,000 | N | F | 06–01–95 | 07–31–95 |
| ST95–2884 | COLORADO INTERSTATE GAS CO. | WESTERN GAS RESOURCES, INC. | 06–29–95 | G–S | 20,000 | N | F | 06–01–95 | 05–31–96 |
| ST95–2885 | COLORADO INTERSTATE GAS CO. | UTILICORP ENERGY SERVICES. | 06–29–95 | G–S | 600 | N | I | 06–01–95 | INDEF. |
| ST95–2886 | MIDCON TEXAS PIPELINE CORP.. | KOCH GATEWAY PIPELINE CO. | 06–30–95 | C | 100,000 | N | I | 06–01–95 | INDEF. |
| ST95–2887 | SOUTHERN NATURAL GAS CO. | CITY OF EDISON .... | 06–30–95 | G–S | 116 | N | F | 06–03–95 | 10–31–96 |

| Docket No.[1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity[2] | Aff. Y/A/N[3] | Rate sch. | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST95–2888 | CARNEGIE INTERSTATE PIPELINE CO. | CHAMPION AGATE CO., INC. | 06–30–95 | G–S | 200 | Y | I | 02–01–95 | INDEF. |
| ST95–2889 | NATURAL GAS P/L CO. OF AMERICA. | ENERGY SOURCE, INC. | 06–30–95 | G–S | 100,000 | N | I | 06–01–95 | INDEF. |
| ST95–2890 | NATURAL GAS P/L CO. OF AMERICA. | DELHI GAS PIPELINE CORP. | 06–30–95 | G–S | 10,000 | N | I | 06–07–95 | INDEF. |
| ST95–2891 | NATURAL GAS P/L CO. OF AMERICA. | COAST ENERGY GROUP, INC. | 06–30–95 | G–S | 8,064 | N | F | 06–01–95 | 06–30–95 |
| ST95–2892 | NATURAL GAS P/L CO. OF AMERICA. | AMERICAN HUNTER ENERGY. | 06–30–95 | G–S | 1,000 | N | F | 06–03–95 | 11–30–00 |
| ST95–2893 | GREAT LAKES GAS TRANS. L.P. | WESTCOAST GAS SERVICES (USA), INC. | 06–30–95 | G–S | 50,000 | N | F | 06–01–95 | 07–31–95 |
| ST95–2894 | GREAT LAKES GAS TRANS. L.P. | KIMBALL/TRIPPE ENERGY ASSOCIATES. | 06–30–95 | G–S | 5,000 | N | F | 06–01–95 | 12–31–95 |
| ST95–2895 | MIDWESTERN GAS TRANSMISSION CO. | ILLINOIS POWER CO. | 06–30–95 | G–S | 40,000 | N | I | 06–09–95 | INDEF. |
| ST95–2896 | TENNESSEE GAS PIPELINE CO. | YANKEE GAS SERVICES CO. | 06–30–95 | G–S | 10,250 | N | F | 06–01–95 | INDEF. |
| ST95–2897 | TENNESSEE GAS PIPELINE CO. | BERKSHIRE GAS CO. | 06–30–95 | G–S | 3,728 | N | F | 06–01–95 | INDEF. |
| ST95–2898 | WILLISTON BASIN INT. P/L CO. | INTERENERGY RESOURCES CORP. | 06–30–95 | G–S | 164,500 | A | I | 06–01–95 | 05–31–97 |
| ST95–2899 | WILLISTON BASIN INT. P/L CO. | CENEX, INC ..... | 06–30–95 | G–S | 10,000 | A | I | 06–01–95 | 05–31–97 |
| ST95–2900 | WILLISTON BASIN INT. P/L CO. | KOCH GAS SERVICES CO. | 06–30–95 | G–S | 40,000 | A | I | 06–01–95 | 05–31–97 |
| ST95–2901 | FLORIDA GAS TRANSMISSION CO. | TEXACO GAS MARKETING, INC. | 06–30–95 | G–S | 75,000 | N | I | 06–03–95 | INDEF. |
| ST95–2902 | FLORIDA GAS TRANSMISSION CO. | NGC TRANSPORTATION, INC. | 06–30–95 | G–S | 30,000 | N | F | 06–02–95 | 06–30–95 |
| ST95–2903 | FLORIDA GAS TRANSMISSION CO. | NFH MANAGEMENT CORP. | 06–30–95 | G–S | 161 | N | F | 06–03–95 | 02–28–15 |
| ST95–2904 | FLORIDA GAS TRANSMISSION CO. | PENNUNION ENERGY SERVICES, L.L.C. | 06–30–95 | G–S | 25,000 | N | I | 06–01–95 | INDEF. |
| ST95–2905 | FLORIDA GAS TRANSMISSION CO. | UNION OIL CO. OF CALIFORNIA. | 06–30–95 | G–S | 60,000 | N | I | 06–01–95 | INDEF. |
| ST95–2906 | FLORIDA GAS TRANSMISSION CO. | MARATHON OIL CO | 06–30–95 | G–S | 20,000 | N | I | 06–03–95 | INDEF. |
| ST95–2907 | IROQUOIS GAS TRANSMISSION SYSTEM. | STAMPGAS U.S. INC. | 06–30–95 | G–S | 100,000 | N | I | 06–01–95 | INDEF. |
| ST95–2908 | IROQUOIS GAS TRANSMISSION SYSTEM. | KOCH GAS SERVICES CO. | 06–30–95 | G–S | 30,000 | N | I | 06–20–95 | INDEF. |
| ST95–2909 | IROQUOIS GAS TRANSMISSION SYSTEM. | MOBIL NATURAL GAS INC. | 06–30–95 | G–S | 50,000 | N | I | 06–01–95 | INDEF. |
| ST95–2910 | SOUTHERN NATURAL GAS CO. | CITY OF CAIRO ..... | 06–30–95 | G–S | 818 | N | F | 06–02–95 | 10–31–96 |
| ST95–2911 | SOUTHERN NATURAL GAS CO. | CITY OF ADAIRSVILLE. | 06–30–95 | G–S | 126 | N | F | 06–01–95 | 10–31–95 |
| ST95–2912 | SOUTHERN NATURAL GAS CO. | CITY OF GRANTVILLE. | 06–30–95 | G–S | 284 | N | F | 06–03–95 | 10–31–96 |
| ST95–2913 | SOUTHERN NATURAL GAS CO. | CITY OF MONTICELLO. | 06–30–95 | G–S | 255 | N | F | 06–01–95 | 10–31–95 |
| ST95–2914 | SOUTHERN NATURAL GAS CO. | CITY OF CAIRO ..... | 06–30–95 | G–S | 55 | N | F | 06–02–95 | 10–31–96 |
| ST95–2915 | SOUTHERN NATURAL GAS CO. | CITY OF MONTICELLO. | 06–30–95 | G–S | 665 | N | F | 06–03–95 | 10–31–95 |
| ST95–2916 | SOUTHERN NATURAL GAS CO. | CITY OF EATONTON. | 06–30–95 | G–S | 1,936 | N | F | 06–01–95 | 10–31–96 |

| Docket No.[1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity[2] | Aff. Y/A/N[3] | Rate sch. | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST95–2917 | SOUTHERN NATURAL GAS CO. | CITY OF MEIGS ..... | 06–30–95 | G–S | 116 | N | F | 06–01–95 | 10–31–96 |
| ST95–2918 | SOUTHERN NATURAL GAS CO. | CITY OF BLAKELY .. | 06–30–95 | G–S | 196 | N | F | 06–04–95 | 12–31–05 |
| ST95–2919 | SOUTHERN NATURAL GAS CO. | CITY OF VIENNA .... | 06–30–95 | G–S | 179 | N | F | 06–01–95 | 12–31–05 |
| ST95–2920 | SOUTHERN NATURAL GAS CO. | CITY OF NASHVILLE. | 06–30–95 | G–S | 114 | N | F | 06–01–95 | 10–31–95 |
| ST95–2921 | SOUTHERN NATURAL GAS CO. | CITY OF CAMILLA .. | 06–30–95 | G–S | 158 | N | F | 06–01–95 | 12–31–05 |
| ST95–2922 | SOUTHERN NATURAL GAS CO. | CITY OF DOERUN .. | 06–30–95 | G–S | 160 | N | F | 06–01–95 | 10–31–96 |
| ST95–2923 | SOUTHERN NATURAL GAS CO. | CITY OF DONALSONVILLE. | 06–30–95 | G–S | 34 | N | F | 06–01–95 | 10–31–96 |
| ST95–2924 | SOUTHERN NATURAL GAS CO. | CITY OF SPARTA ... | 06–30–95 | G–S | 525 | N | F | 06–01–95 | 10–31–95 |
| ST95–2925 | SOUTHERN NATURAL GAS CO. | CITY OF OCILLA ..... | 06–30–95 | G–S | 275 | N | F | 06–01–95 | 10–31–96 |
| ST95–2926 | SOUTHERN NATURAL GAS CO. | CITY OF UNADILLA | 06–30–95 | G–S | 321 | N | F | 06–02–95 | 10–31–96 |
| ST95–2927 | SOUTHERN NATURAL GAS CO. | CITY OF MILLEN ..... | 06–30–95 | G–S | 766 | N | F | 06–08–95 | 10–31–95 |
| ST95–2928 | SOUTHERN NATURAL GAS CO. | CITY OF HOGANSVILLE. | 06–30–95 | G–S | 1,022 | N | F | 06–20–95 | 10–31–95 |
| ST95–2929 | SOUTHERN NATURAL GAS CO. | CITY OF COCHRAN | 06–30–95 | G–S | 1,251 | N | F | 06–20–95 | 10–31–95 |
| ST95–2930 | SOUTHERN NATURAL GAS CO. | CITY OF LUMPKIN .. | 06–30–95 | G–S | 202 | N | F | 06–01–95 | 10–31–96 |
| ST95–2931 | SOUTHERN NATURAL GAS CO. | CITY OF WOODLAND. | 06–30–95 | G–S | 102 | N | F | 06–01–95 | 10–31–96 |
| ST95–2932 | SOUTHERN NATURAL GAS CO. | CITY OF COLQUITT | 06–30–95 | G–S | 114 | N | F | 06–02–95 | 10–31–95 |
| ST95–2933 | SOUTHERN NATURAL GAS CO. | CITY OF EDISON .... | 06–30–95 | G–S | 44 | N | F | 06–02–95 | 10–31–96 |
| ST95–2934 | SOUTHERN NATURAL GAS CO. | CITY OF DONALSONVILLE. | 06–30–95 | G–S | 126 | N | F | 06–01–95 | 10–31–96 |

[1] NOTICE OF TRANSACTIONS DOES NOT CONSTITUTE A DETERMINATION THAT FILINGS COMPLY WITH COMMISSION REGULATIONS IN ACCORDANCE WITH ORDER NO. 436 (FINAL RULE AND NOTICE REQUESTING SUPPLEMENTAL COMMENTS, 50 FR 42372, 10/10/85).
[2] ESTIMATED MAXIMUM DAILY VOLUMES INCLUDES VOLUMES REPORTED BY THE FILING COMPANY IN MMBTU, MCF AND DT.
[3] AFFILIATION OF REPORTING COMPANY TO ENTITIES INVOLVED IN THE TRANSACTION. A "Y" INDICATES AFFILIATION, AN "A" INDICATES MARKETING AFFILIATION, AND A "N" INDICATES NO AFFILIATION.

[FR Doc. 95–18547 Filed 7–27–95; 8:45 am]
BILLING CODE 6717–01–P

**[Docket No. CP95–615–000, et al.]**

## Mississippi River Transmission Corporation, et al.; Natural Gas Certificate Filings

July 20, 1995.

Take notice that the following filings have been made with the Commission:

### 1. Mississippi River Transmission Corporation

[Docket No. CP95–615–000]

Take notice that on July 13, 1995, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP95–615–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to install a sales tap to provide natural gas transportation service to the American Refining Group (ARG), under MRT's blanket certificate issued in Docket No. CP82–489–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

MRT proposes to install approximately 2,300 feet of 2-inch pipe, a measuring and regulating station, and related facilities and equipment. The proposed sales tap will interconnect with MRT's Alton Loop East in Section 10, Township 4 North, Range 9 West, Madison County, Illinois and requires the purchase of right-of-way. ARG requested this delivery for its fuel oil refining plant in Madison County. MRT states that it will deliver an estimated 400 MMBtu of natural gas on a peak day and an estimated 80,000 MMBtu on an annual basis at the proposed sales tap. MRT is authorized to transport gas for ARG pursuant to its blanket transportation certificate issued in Docket No. CP89–1121–000. MRT states that the proposed facilities will cost $81,000 and MRT Energy Marketing Company, the marketing company which has contracted to provide service to ARG, will reimburse MRT for the cost.

MRT states that this additional sales tap is not prohibited in its existing FERC Gas Tariff, that there is sufficient capacity to accomplish the proposed deliveries without detriment or disadvantage to other customers, and it is not expected to affect MRT's system-wide peak day deliveries.

*Comment date:* September 5, 1995, in accordance with Standard Paragraph G at the end of this notice.

**2. Granite State Gas Transmission, Inc.**

[Docket No. CP95–616–000]

Take notice that on July 14, 1995, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581, filed in Docket No. CP95–616–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to add a new delivery point in Old Orchard, Maine, for deliveries to its affiliate distributor, Northern Utilities, Inc. (Northern Utilities). Granite State makes such request, under its blanket certificate issued in Docket No. CP82–515–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Granite State indicates that it will install a new delivery point on its existing transmission line, within its existing right-of-way at Cascade Road, Old Orchard, Maine. It has been averred that this proposal will provide service to several new customers, who have an estimated annual consumption of 29,898 Mcf. It is stated that the new delivery point is estimated to cost $30,755, which Granite State will be reimbursed for by Northern Utilities.

It is further stated that the total volumes which Granite State is authorized to deliver to Northern Utilities, after approval of this request will not exceed Northern Utilities existing entitlements. It is also stated that the construction of the new delivery point is not prohibited by Granite State's existing tariff pursuant to which firm transportation deliveries are made to Northern Utilities, and that deliveries through the new delivery point will be made without detriment or disadvantage to Granite State's other customers.

*Comment date:* September 5, 1995, in accordance with Standard Paragraph G at the end of this notice.

**3. Trunkline Gas Company**

[Docket No. CP95–619–000]

Take notice that on July 14, 1995, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–619–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to operate a new delivery point and appurtenant facilities to accommodate natural gas deliveries to the City of Senatobia, Mississippi (Senatobia), a local distributor of natural gas under the blanket certificate issued in Docket No. CP83–84–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline asserts that the proposed delivery point is located in Tate County, Mississippi. Trunkline claims that Senatobia will utilize an existing meter site located approximately 2,400 feet from Trunkline's right-of-way and construct a 4-inch pipeline on existing right-of-way from the meter site to the edge of Trunkline's right-of-way. Trunkline proposes to re-tap an existing 2-inch tap valve #82A–101 on its 26-inch Line No. 100–1 and install approximately 200 feet of 2-inch pipeline on its existing right-of-way to connect with Senatobia's line. Trunkline states that it will own, operate and maintain the hot tap and the line up to the Senatobia pipeline. Additionally, Trunkline proposes to install, own and operate the electronic gas measurement system (EGM) including communications at the meter site.

Trunkline states that the proposed delivery point will permit Trunkline to accommodate natural gas deliveries of 10 Mmcf per day of natural gas to Senatobia. Trunkline estimates that the cost of re-tapping the hot tap, EGM, and appurtenant facilities will be approximately $55,000.

*Comment date:* September 5, 1995, in accordance with Standard Paragraph G at the end of this notice.

**4. East Tennessee Natural Gas Company**

[Docket No. CP95–621–000]

Take notice that on July 17, 1995, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–621–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon its Newport Lateral and the Newport Loop by sale to Jefferson-Cocke County Utility District (Jefferson-Cocke) under East Tennessee's blanket certificate issued in Docket No. CP82–412–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

East Tennessee proposes to abandon its Newport Lateral (12.102 miles of 6-inch pipeline) and the Newport Loop (0.685 miles of 6-inch pipeline) by sale to Jefferson-Cocke. East Tennessee states that Jefferson-Cocke is the only customer served by the facilities proposed to be abandoned. These facilities are located in Jefferson and Cocke Counties, Tennessee, downstream of East Tennessee's White Pine meter station extending from M.P. 3303B–101+0.01 and ending at M.P. 3303B–104+0.00. The Newport Loop, which parallels the Newport Lateral, is located at the French Broad River crossing. East Tennessee lists the cost of the facilities proposed to be abandoned as $310,074.

*Comment date:* September 5, 1995, in accordance with Standard Paragraph G at the end of this notice.

**5. Northwest Pipeline Corporation**

[Docket No. CP95–625–000]

Take notice that on July 18, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95–625–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for authorization to remove and abandon existing facilities and to construct and operate upgraded metering facilities at the Kettle Falls Meter Station located in Spokane County, Washington under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that the proposed upgraded meter station will have a design capacity of approximately 30,250 Dth per day at a delivery pressure of 360 psig and that the proposed facilities will be used to provide firm deliveries of up to 30,000 Dth per day to The Washington Water Power Company (Water Power) under existing transportation agreements.

Northwest also states that the total costs for removing and abandoning the existing facilities and constructing the upgraded meter station are estimated to be $438,500, approximately $83,753 of which will be reimbursed by Water Power.

*Comment date:* September 5, 1995, in accordance with Standard Paragraph G at the end of this notice.

**6. K N Interstate Gas Transmission Company**

[Docket No. CP95–626–000]

Take notice that on July 19, 1995, K N Interstate Gas Transmission Company (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed in Docket No. CP95–626–000 a request pursuant to Sections 157.205 and

157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for approval to install and operate six new delivery taps for its affiliate, K N Energy, Inc., (K N), a local distribution company, for ultimate sale to various retail customers, under K N Interstate's blanket certificate issued in Docket No. CP83–140–000 and CP83–140–001, and Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N Interstate proposes four new delivery taps to be located in Frontier, Lincoln, and Valley Counties, Nebraska. K N Interstate states that the proposed taps will deliver 2, 137, 137, and 30 Mcf on a peak day, respectively, and 144, 8,208, 8,208, and 990 Mcf annually, respectively. K N estimates that these taps will cost $400, $2500, $2500, and $1,150, respectively, to construct.

K N Interstate also proposes two new delivery taps to be located in Logan County, Colorado and Converse County, Wyoming, respectively. K N Interstate states that these proposed taps will deliver 3 and 5 Mcf on a peak day, respectively, and 202 and 288 Mcf annually, respectively. K N Interstate further estimates that these taps will both cost $400 to construct.

K N Interstate indicates that the proposed facilities will not have an adverse impact on its existing customers. K N Interstate advises that the volumes of gas which will be delivered at the proposed taps will be within the current maximum daily transportation quantity set forth in K N Interstate's transportation service agreement with K N. K N Interstate further advises that the addition of the delivery taps is not prohibited by its existing tariff.

*Comment date:* September 5, 1995, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraph**

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–18546 Filed 7–27–95; 8:45 am]

BILLING CODE 6717–01–P

**[Docket No. ER93–465–017]**

## Florida Power & Light Co.; Notice of Filing

July 24, 1995.

Take notice that on June 23, 1995, Florida Power & Light Company tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–18539 Filed 7–27–95; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. PR95–15–000]**

## Manchester Pipeline Corp.; Notice of Petition for Rate Approval

July 24, 1995.

Take notice that on July 12, 1995, Manchester Pipeline Corporation (Manchester) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable, market-based rates for firm and interruptible storage services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). The rates for the individual storage services will be negotiated between Manchester and various shippers. Manchester does not propose to have established any maximum or minimum rate for any generic service. Manchester does, however, intend to retain 2.80% of the injection/withdrawal volumes as an allowance for compressor fuel and losses for storage of natural gas.

Manchester's petition states that it is an intrastate natural gas pipeline company within the meaning of section 2(16) of the NGPA in the State of Oklahoma. Manchester owns storage facilities in the State of Oklahoma, which are the subject of this petition. The storage facilities consist of 17 Bcf of working storage capacity with injection rates of up to 100 MMcf per day and withdrawal rates of up to 250 MMcf per day. Facilities also include approximately 13 miles of pipeline interconnecting the storage facilities with Oklahoma Natural Gas Company and Williams Natural Gas Company, nine injection/withdrawal wells, and three compressor units. Manchester is a new entrant in the storage market and has not previously offered Section 311 services. Manchester proposes to charge market-based rates subject to refund effective upon the filing of this petition.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the market-based negotiated rates for firm and interruptible storage services will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before August 8, 1995. The petition for rate approval is on file with the Commission and is available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–18542 Filed 7–27–95; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. ER95–1035–000]**

## Nevada Power Co.; Notice of Filing

July 24, 1995.

Take notice that on June 20, 1995, Nevada Power Company tendered for filing an amendment to its May 10, 1995 filing in the above-referenced Docket. The Docket provides for the sale of firm capacity and energy to the Colorado

River Commission (CRC). The amendment requires the CRC to pay an energy charge that is at least equal to Nevada Power's system incremental cost of energy.

Copies of this filing were served on CRC and the Nevada Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 4, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–18540 Filed 7–27–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP95–391–000]**

## Ozark Gas Transmission System; Notice of Petition for Waiver

July 24, 1995.

Take notice that on July 18, 1995, Ozark Gas Transmission System (Ozark) filed a request for waiver of the requirement in Order No. 563 to provide electronic file downloading of capacity release data according to Electronic Data Interchange (ELI) standards.

Ozark states that the exit fee stipulations between Ozark and its only two firm shippers have been approved. Ozark states that, as a result, seventy days after the Effective Date of the stipulations, it will have no firm shippers and there can be no releases of firm capacity on Ozark. Ozark further states that there will be no releases of firm capacity on Ozark. Ozark further states that there will be no benefits to shippers by requiring Ozark to implement EDI and any costs associated with the EDI standards on Ozark will necessarily outweigh the benefits.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Emergency Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 31, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–18543 Filed 7–27–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Project No. 2643–001]**

## PacifiCorp; Notice of Availability of Navigability Report for the Deschutes River, Request for Comments, and Notice of Pending Jurisdictional Inquiry

July 24, 1995.

PacifiCorp has filed an application for a subsequent license to continue operating its Bend Hydroelectric Project No. 2643. The project is located on the Deschutes River in the City of Bend, Deschutes County, Oregon. As part of its review of PacifiCorp's relicense application, the Commission staff is investigating the jurisdictional status of the project and has prepared a navigability report for the Deschutes River. The navigability report concludes that the Deschutes River is not navigable in the vicinity of the Bend Project. If the Commission accepts the staff's conclusions regarding navigability, the likely outcome will be a Commission determination that the project is not required to be licensed pursuant to Section 23(b)(1) of the Federal Power Act (FPA). Because this determination may affect the resolution of matters at issue in the relicensing proceeding, all parties and interested persons are being given notice of the pending jurisdictional inquiry and an opportunity to comment on the navigability report. Comments may be filed no later than September 29, 1995.

### Jurisdiction

The Commission recently explained its licensing jurisdiction as follows: [1]

Under the FPA, the Commission has two types of licensing jurisdiction: permissive and mandatory. Permissive licensing is authorized rather than required, and is governed by Section 4(e) of the FPA. Mandatory licensing is governed by Section 23(b)(1) of the FPA, which prohibits the unlicensed construction and operation of certain hydroelectric projects. Thus, it is possible for a voluntary applicant to obtain a license under Section 4(e) of the FPA for a project that would not require a license under Section 23(b)(1).

Under Section 23(b)(1) of the FPA, a license is required for a hydroelectric project if it: (1) is located on ''navigable waters of the United States''; (2) occupies lands or reservations of the United States; (3) uses the surplus water or water power from a government dam; or (4) is located on a non-navigable Commerce Clause stream, affects the interests of interstate or foreign commerce, and has undergone construction or major modification after August 26, 1935.[2] If those conditions are not met, Section 4(e) of the FPA would permit licensing of a hydroelectric project in response to a voluntary application if the project is located on a Commerce Clause water.

The Commission staff has determined that the Bend Hydroelectric Project would not be located on federal lands or make use of a government dam. Therefore, whether licensing is required depends on whether conditions (1) or (4) above are met.

Regarding (4) above, the Commission staff has concluded that the Bend Hydroelectric Project is located on a non-navigable Commerce Clause stream within the meaning of Section 23(b)(1) of the FPA.[3] Because the Bend Project generates power for the interstate electric grid, the project affects the interests of interstate commerce within the meaning of Section 23(b)(1).[4] However, the project was constructed in 1913, and the Commission staff has found no evidence of any significant construction or major modification of the project after 1935.

### Navigability

In these circumstances, whether licensing is required depends on whether the Bend Hydroelectric Project is located on a ''navigable river of the United States.'' The staff's navigability report concludes that the Deschutes River is not navigable in the vicinity of the Bend Hydroelectric Project. It finds that, although portions of the Deschutes River are used by recreational boaters, especially white water rafters, both above and below the project site, the river is not navigable in the vicinity of

[1] Swanton Village, Vermont, 70 FERC ¶ 61,325 at pp. 61,992–93 (1995) (citations omitted). *See* Cooley v. FERC, 843 F.2d 1464, 1471 (D.C. Cir. 1988), *cert. denied*, 109 S.Ct. 327 (1988).

[2] *See* Farmington River Power Co. v. Federal Power Commission, 455 F.2d 86 (2d Cir. 1972).

[3] The Deschutes River flows into the navigable Columbia River. It is well-settled that Commerce Clause streams include the headwaters and tributaries of navigable rivers. *See* 70 FERC ¶ 61,325 at p. 61,994.

[4] *See* Federal Power Commission v. Union Electric Co. (''Taum Sauk''), 381 U.S. 90, 97 (1965).

the project. Popular areas for recreational boating include the upper Deschutes River, from Wickiup Dam to the area north of Bend, and the lower Deschutes River from Pelton Dam to the Columbia River. However, there are large sections of the river that are not used by rafters and boaters, including a section of about 32 river miles in the vicinity of the Bend Project, because of low water caused by irrigation projects, dangers rapids and falls, and dams. The staff's navigability report finds no evidence that the Deschutes River, from the project site to the Columbia River, was ever used or suitable for use for the transportation of persons or property in interstate or foreign commerce.

Comments are invited on the staff's navigability report. If the Commission accepts the staff's conclusions regarding navigability, the likely outcome will be a Commission determination that the Bend Hydroelectric Project is not required to be licensed under Section 23(b)(1) of the FPA.

**Implications for Relicensing**

As explained in the staff's draft Environmental Assessment (EA), the Bend Hydroelectric Project has negative economic benefits under any proposed operating scenario. Moreover, because of the high cost of prescribed fishway facilities, the costs of operating the project under a subsequent Commission license greatly exceed the costs of decommissioning the project. The Commission staff is completing its environmental review of the relicensing proposal and alternatives, and expects to issue a final EA in the near future.

In recent correspondence with the Commission staff, PacifiCorp has stated that, if the Commission issues a subsequent license that includes mandatory fishways and other agency recommendations for fish and wildlife, the project will be uneconomic to operate. The license has further stated: ''PacifiCorp is not likely to accept a new license proffered by the Commission for the Bend Project if such conditions are included.'' [5]

If licensing is requiring under Section 23(b)(1) of the FPA, a hydroelectric license may not continue to operate its project without a license.[6] If licensing is not required, however, a hydroelectric licensee may, following expiration of its original license, either withdraw its relicense application or reject a new or subsequent license and continue to operate the project without a license under the FPA, subject only to whatever other federal, state, or local laws may be applicable.[7]

This suggests that the State of Oregon may ultimately be responsible for determining whether the Bend Project should continue to operate or should be decommissioned. Similarly, Oregon may ultimately be responsible for determining what conditions should be required, either for continued operation or for decommissioning. To ensure that state officials and all parties to the relicensing proceeding have advance notice of this possibility and of the preliminary navigability finding on which it is based, interested persons are being given notice of the pending jurisdictional inquiry and an opportunity to comment on the staff's navigability report.

Concurrent with publication of this notice, all persons whose names appear on the official service list for the Bend relicensing proceeding will receive a copy of the navigability report. Additional copies are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Comments on the navigability report should be filed with Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 N. Capitol St., N.E., Washington, D.C. 20426. Comments should be filed by September 29, 1995, and should reference Project No. 2643–001. For further information, please contact Linda S. Gilbert at (202) 208–5759.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–18538 Filed 7–27–95; 8:45 am]

BILLING CODE 6717–01–M

[5] Letter from S.A. DeSousa, PacifiCorp, to John H. Clements, FERC, dated April 18, 1995.

[6] *See* 381 U.S. at 98 n. 10.

[7] *See* Pennsylvania Electric Co., 56 FERC ¶ 61,435 (1991) (hydroelectric licensee with a voluntary license under Section 4(e) of the FPA need not file a relicense application and may continue operating without a license following expiration of the original license).

**[Docket No. RP95–393–000]**

## Wyoming Interstate Company, Ltd.; Notice of Tariff Filing

July 24, 1995.

Take notice that on July 20, 1995, Wyoming Interstate Company, Ltd. (WIC) tendered for filing revised tariff sheets, to its FERC Gas Tariff, First Revised Volume No. 1, WIC states that the new tariff sheets are filed to delete Columbia Gas Transmission Corporation (Columbia) as a shipper on WIC. Abandonment authorization was received on February 10, 1995 (70 FERC ¶ 61,157) for the transportation service and the Commission approved of a settlement to which Columbia agreed to pay an exit fee. Certain parties filed for rehearing. On June 15, 1995, the Commission approved a settlement in a related Columbia rate proceeding which rendered the rehearing requests moot. (Docket Nos. GP94–2–003, *et al.*, 71 FERC ¶ 61,337).

WIC has filed revision to Sheet Nos. 4, 5A and 23 to delete Columbia. An effective date of July 1, 1995 was requested.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such petitions or protests should be filed on or before July 31, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–18544 Filed 7–27–95; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5266–3]**

## Proposed Settlement; Acid Rain Allowance Allocations and Reserves Rule Litigation

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

**ACTION:** Notice of proposed settlement; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act (''Act''), notice is hereby given of a proposed settlement of *Central Louisiana Electric Company, Inc. v. United States Environmental Protection Agency*, No. 93–1330 (D.C. Cir.).

This case involves a challenge to the final rule, entitled ''Acid Rain Allowance Allocations and Reserves,'' which, *inter alia*, allocated sulfur dioxide emission allowances to Rodemacher Power Station Unit 2. 58 FR 15634, 15669 (March 23, 1993).

For a period of thirty (30) days following the date of publication of this

notice, the Environmental Protection Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. The Agency or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the settlement are available from Samantha Hooks, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7606. Written comments should be sent to Jon Averback at the above address and must be submitted on or before August 28, 1995.

Dated: July 24, 1995.

**Jonathan Z. Cannon,**

*Assistant Administrator (General Counsel).*

[FR Doc. 95–18619 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–M

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**[ER–FRL–4725–3]**

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 19, 1995 Through June 23, 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 Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

### Draft EISs

ERP No. D–FHW–E40759–AL Rating EC2, Birmingham Northern Beltline Project, Construction, I–59/20 west to I–59 northeast in the City of Birmingham, Funding and Possible COE Section 404 Permit, Jefferson County, AL.

#### Summary

EPA's review revealed that all of the alternatives will impact environmental resources in the highway corridor; additional information on wetlands mitigation was requested.

ERP No. D–GSA–D81026–MD Rating EC2, Food and Drug Administration Consolidation, Site Selection, Montgomery County Campus, Montgomery and Prince Georges Counties, MD.

#### Summary

EPA expressed environmental concerns regarding the air analysis for the and storm water management facilities. EPA requested that these issues be clarified in the final EIS.

ERP No. D–SFW–K99026–CA Rating LO, Multiple Species Conservation Program Planning Area, Issuance of a Permit to Allow Incidental Take of Threatened and Endangered Species, San Diego County, CA.

#### Summary

EPA expressed a lack of objections with the draft EIS and the proposed action.

ERP No. D–USN–E11036–FL Rating EC2, Naval Training Center Orlando Disposal and Reuse, Implementation, Orange County, FL.

#### Summary

EPA had environmental concerns on the lack of information concerning radiological issues; wetlands impacts and mitigation; and air quality monitoring and control measures.

ERP No. D–USN–K11062–CA Rating EC2, San Diego Homeporting Facilities Construction and Operation to Support Berthing One NIMITZ Class Aircraft Carrier, Implementation, San Diego County, CA.

#### Summary

EPA requested additional information and clarification on the disturbance, dredging, disposal of contaminated and non-contaminated sediment, biological resource issues, and human health and safety issues.

ERP No. DA–AFS–L65147–AK Rating EC2, Bohemia Mountain Timber Sale, Updated Information concerning Resolution of Three Appeal Issues Regarding Harvesting Timber, Tongass National Forest, Stikine Area, AK.

#### Summary

EPA expressed environmental concerns regarding water quality and fisheries impacts. Additional information is needed on monitoring. EPA requested more information on these issues and also recommended that a detailed water quality monitoring plan be presented.

ERP No. DS–COE–E01002–NC Rating EC2, Texasgulf Open Pit Mine Continuation, Construction and Operation, Additional Information Concerning Alternative E for Wetland Avoidance/Minimization, Permit Approval, Pamlico River, Aurora, Beaufort County, NC.

#### Summary

EPA had environmental concerns over potential impacts to wetlands, and suggested modifications to further reduce impact to wetlands.

### Final EISs

ERP No. F–USN–D11023–MD, Naval Air Warfare Center Aircraft Division, Base Realignment and Construction, Patuxent River, St. Mary's, Calvert and Charles Counties, MD.

#### Summary

The final EIS adequately addressed EPA's earlier concerns.

### Regulations

ERP No. R–AFS–A65160–00, 36 CFR Parts 215, 217 and 219 National Forest System Land and Resource Management Planning.

#### Summary

While EPA believed that the proposed rule is an improvement, it expressed concern regarding the implementation of ecosystem management and criteria for ecosystem sustainability, diminished public participation and resource protection issues.

Dated: July 25, 1995.

**William D. Dickerson,**

*Director, Office of Federal Activities.*

[FR Doc. 95–18622 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–U

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**[ER–FRL–4725–2]**

## 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 July 17, 1995 Through July 21, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950320, Final EIS, BLM, OR, Upper Klamath Basin Resource Management Plan, Implementation, Klamath Falls Resource Area, Lakeview District, Klamath County, OR, Due: August 28, 1995, Contact: Eric Stone (503) 952–6087.

EIS No. 950321, Final EIS, AFS, CA, Mt. Reba Ski Area Expansion, Stanislaus National Forest, Special Use Permit, Calaveras Ranger District, Alpine County, CA, Due: August 28, 1995, Contact: Dave Freeland (209) 795–1381.

EIS No. 950322, Draft EIS, AFS, WA, First Creek Basin Restoration Project, Implementation, Wenatchee National Forest, Chelan Ranger District, Chelan County, WA, Due: September 13,

1995, Contact: Al Murphy (509) 682–2576.

EIS No. 950323, Draft Supplement, FHW, ME, Sears Island Marine Dry Cargo Terminal and Access Road Construction, Funding, COE Section 404 and 10 Permits, Waldo County, ME, Due: September 29, 1995, Contact: Paul Lariviere (207) 622–8487.

EIS No. 950324, Final EIS, NOA, 1995 Regulatory Amendment for the Western Atlantic Bluefin Tuna Fishery, Implementation, Contact: Richard B. Stone (301) 713–2347.

Under Section 1506.10(d) of the Council on Environmental Quality Regulations For Implementating The Procedural Provisions of the National Environmental Policy Act a 30-day Waiver of the Prescribed Period has been Granted.

EIS No. 950325, Draft EIS, NPS, VA, Richmond National Battlefield Park General Management Plan and Land Protection Plan, Implementation, Hanover, Henrico and Chesterfield Counties, VA, Due: September 11, 1995, Contact: John H. Reber (303) 969–2418.

EIS No. 950326, Draft Supplement, NIH, MD, William H. Natcher Building, Phase II Construction and Consolidation, Updated Information, Located on National Institutes of Health Bethesda Campus, Funding and NPDES Permit, Montgomery County, MD, Due: September 11, 1995, Contact: Janyce Hedetniemi (301) 496–3931.

EIS No. 950327, Final EIS, DOE, SC, Savannah River Site Waste Management Facilities, Implementation, Aiken, Allendale and Barnwell Counties, SC, Due: August 28, 1995, Contact: Arthur B. Gould, Jr. 1–(800)–242–8269.

**Amended Notices**

EIS No. 950232, Draft Supplement, FHW, NC, US 117 Corridor Improvement Project, US 13/70 at Goldsboro, North to US 301 in Wilson, Funding and COE Section 404 Permit, Updated and Additional information, Wayne and Wilson Counties, NC, Due: July 24, 1995, Contact: Nicholas L. Graf (919) 856–4346.

Published FR—6–09–95 Correction of Document Status from Final to Draft Supplemental EIS.

EIS No. 950315, Draft EIS, EPA/COE, NJ, Hackensack Meadows District (HMD) Special Area Management Plan (SAMP), Development and Implementation, COE Section 10 and 404 Permit Issuance, NJ, Due: September 18, 1995, Contact: Roberta W. Hargrove (212) 637–3495.

Published FR—07–21–95 The US Environmental Protection Agency and the US Army Corps of Engineers (COE) are Joint Lead Agencies for this Project. The COE contact is Joseph J. Seebode, Phone Number (212) 264–3993.

Dated: July 25, 1995.

**William D. Dickerson,**

*Director, Office of Federal Activities.*

[FR Doc. 95–18624 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–U

**[FRL–5266–6]**

## Marsh Management Subcommittee; Public Meeting; Cancellation

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

**ACTION:** Notice of meeting cancellation.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice of cancellation is hereby given for the two day meeting of the Marsh Management Subcommittee under the Ecosystem Sustainable Economies Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). The meeting notice was announced in the **Federal Register** on July 17, 1995, published at 60 FR 36414.

*Previously Announced Time and Date of Meeting:* The Subcommittee was scheduled to meet on August 2–3, 1995.

*Previously Announced Location of Meeting:* Corps of Engineers New Orleans District Office located at the Foot of Prytania, 7400 Leake Avenue, New Orleans, LA 70118.

*Changes in the Meeting:* EPA has not scheduled a new meeting. The new date and location for the meeting will be announced in the **Federal Register** after determination.

**FOR FURTHER INFORMATION CONTACT:** Connie Cahanap, Wetlands Division, OWOW, Mail Code 4502F, U.S. Environmental Protection Agency, Washington, DC 20460, (202) 260–6531.

Dated: July 25, 1995.

**Robert H. Wayland III,**

*Director, Office of Wetlands, Oceans and Watersheds.*

[FR Doc. 95–18738 Filed 7–27–95; 8:45 am]

BILLING CODE 6560–50–M

**[FRL–5265–1]**

## Superfund Program; Revised Model CERCLA RD/RA Consent Decree

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The Agency is today publishing a revised version of the Model CERCLA RD/RA Consent Decree. The revised Model, which will supersede the 1991 interim Model, has been jointly modified by EPA and the Department of Justice on the basis of experience to date. The principal impetus behind the important substantive changes contained in the revised Model has been a desire to enhance the fairness and increase the number of settlements in which potentially responsible parties agree to implement government-selected remedies at Superfund sites. By publishing the revised Model EPA seeks to broadly inform affected members of the public of changes in the federal government's policy with respect to settlements for the performance of remedial design/remedial action (RD/RA).

**FOR FURTHER INFORMATION CONTACT:** Steve Botts, Mail Code 2272, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–5787.

**Steven A. Herman,**

*Assistant Administrator, Office of Enforcement and Compliance Assurance.*

**Memorandum**

Subject: Final Revised Model CERCLA RD/RA Consent Decree

From:

Steven A. Herman, Assistant Administrator for Enforcement, and Compliance Assurance

Lois Schiffer, Assistant Attorney General for Environment and Natural Resources, U.S. Department of Justice

To: Regional Administrators, Regions I–X

Attached is the final version of the revised Model CERCLA RD/RA Consent Decree. This document supplants the Interim Model CERCLA RD/RA Consent Decree published in the July 8, 1991 **Federal Register** (56 FR 30996).

**Summary**

The Model has been successful in achieving, as one of its main goals, a reduction in the amount of time spent on drafting and negotiating individual consent decrees, allowing settlements to be reached more quickly and with fewer transaction costs. The Model also has been effective in ensuring that consent decrees for remedial design/remedial action protect the interests of the public and assure the accomplishment of the important cleanup objectives of the Superfund program.

However, there have been persistent complaints from potentially responsible

parties (''PRPs'') that the Model is overly stringent in certain respects. At a number of sites PRPs have indicated that the Model was an impediment to settlement, contributing to an increase in the need to use unilateral orders to accomplish cleanup. Since settlement requires agreement by both sides, we have taken seriously comments by PRPs regarding provisions that they claim create serious obstacles to settlement.

The revised Model represents a major effort to respond to PRP concerns and to protect the interests of the people of the United States. The revised Model also clarifies provisions whose meaning was unclear and brings the Model RD/RA Consent Decree into conformity with other model settlement documents being developed by EPA and the Department of Justice. The new Model decree reflects the sustained efforts of a Headquarters/Region/ DOJ workgroup and considerable input from numerous regional personnel.

**Specific Revisions From Old Model**

*Additional Response Actions*

The ''Additional Response Actions'' section in the old Model has been the subject of by far the most frequent and vociferous criticism by PRPs. This provision required the settling defendants to undertake any additional response actions that EPA may later determine to be necessary in the event that the original remedial action fails to meet the ''performance standards'' specified in the Decree. PRPs characterized this obligation as a ''blank check'' that unfairly subjected them to potentially large and unknown costs. Some PRPs indicated that, although they recognize the need for EPA to reserve its rights to seek additional work in the event of remedy failure, it is unfair and unduly burdensome to require PRPs to accept the obligation to perform such unknown work as an affirmative obligation under the Decree.

We are addressing this concern by deleting the ''Additional Response Actions'' section of the Interim Model, in favor of two new provisions addressing the questions of remedy failure and modifications of the remedial action plan that may be needed as the remedy is implemented.

*Modification of the Statement of Work*

First, a new paragraph entitled ''Modification of the Statement of Work or Related Work Plans'' has been added to Section VI of the Model (''Performance of the Work by settling defendants''). This provision will enable EPA to require the settling defendants to implement modifications to the Statement of Work or ''SOW'' (usually attached to the consent decree), or to work plans submitted under the decree, if such modifications become necessary as the remedy is implemented. Such modifications, however, may be required only to the extent they are ''consistent with the scope of the remedy selected in the ROD'' (Record of Decision) that the settling defendants have agreed to implement. In order to assure that there is clarity and a common understanding about the scope of the settling defendants' obligations under this provision, the revised Model calls for a site-specific definition of ''the scope of the remedy selected in the ROD'' to be drafted and negotiated in each decree. This definition should be crafted in terms of the remedial approach stated in the ROD, and not in terms of performance standards or other general remedial goals.

*Reservation of Rights*

Second, the revised Model contains a new provision in the ''General Reservations of Rights'' paragraph in Section XXI (Covenants Not To Sue by Plaintiffs), that allows the government to seek, in new litigation, additional response actions necessary to achieve performance standards that are beyond the scope of the remedy selected in the ROD. This reservation is significantly different from the ''Additional Response Actions'' provision of the current model, in that it does not impose the obligation to perform such response actions as an affirmative obligation under the Decree. This new reservation is accompanied by a footnote stating that it may be omitted in appropriate circumstances, such as in exchange for a premium or other consent decree provision(s), taking into account the risk (of remedy failure) being assumed by EPA.

These revisions represent a significant departure from the approach of the ''Additional Response Actions'' Section of the old Model. We believe they strike a careful balance between the public's interest in achieving successful remediation of Superfund sites through consent decrees, and the settling defendants' interest in obtaining reasonable certainty regarding the scope of the affirmative obligations they are accepting in entering into a settlement. The revisions address the ''blank check'' objection to the old Model by limiting the modifications to the work that EPA can require under the Decree to modifications that are consistent with the scope of the remedy set forth in the ROD. By focusing negotiations on the site-specific definition of this term, the revised Model is intended to afford settling defendants certainty regarding the breadth of their affirmative obligations.

Where the new reservation of rights provision is used, settling defendants retain all defenses to liability, as well as their ability to challenge EPA's remedial determinations. Thus, instead of requiring settling defendants to perform additional, unknown response actions, this provision simply reserves the rights and arguments of both sides with respect to liability for additional response actions, beyond the scope of the ROD, that are necessary to achieve performance standards.

Moreover, the Regions will have substantial discretion to omit this reservation in appropriate circumstances, taking into account the risk being assumed by the agency. The magnitude of this risk depends on such factors as the nature and extent of the contamination, physical site conditions, and the reliability of the selected remedial technology. In many cases, this risk may not be substantial, and the considerations (such as a premium or other consent decree provisions) that the government should obtain in consideration for its deletion should reflect this circumstance. Conversely, in those cases where the risk is particularly acute, it may be necessary to retain the reservation or to require a more substantial premium or other consideration in return for its deletion.

In EPA's experience, there have been few situations in which it has been necessary to seek further response actions that go beyond the scope of the remedy selected in the ROD. As the agency's experience with various site conditions, contaminants, and remedial technologies increases, we expect these situations to become even more rare. The ultimate consideration in omitting the new reservation will be whether the final decree, taken as a whole, represents an appropriate settlement in light of all relevant factors, including the risk being accepted by the government on behalf of the American public.

*Other Revisions*

As required by Section 122(f)(6) of CERCLA, the standard reservations of liability contained in paragraphs 80 and 81 of the old Model (the ''reopeners'' for ''unknown conditions'' and ''new information'') are retained. In addition, the revised Model retains the provision of Paragraph 22 of the old Model (in the ''Periodic Review'' provision),[1] pursuant to which Settling defendants can be

[1] This section is renumbered as Section VII of the revised Model, titled ''Remedy Review.''

required to perform further response actions under the Decree if these reopener conditions develop. However, in recognition that the main purpose of this provision is to avoid disputes over liability in ''reopener litigation'' (which are likely to be complicated by loss of evidence over time), the revised Model recognizes that there may be cases in which this provision is not necessary or the problem it addresses can be resolved by an alternative provision.

A number of other important revisions to the Model have also been adopted relating to such issues as stipulated penalties, EPA review of submissions, indemnification, force majeure, and a waiver of contribution claims against very small (''*de micromis*'') contributors. Additional modifications have been made to clarify certain provisions and to correct technical errors.

*Consultation Procedures*

A memorandum accompanying the 1991 version of the Model required Regional offices to consult with EPA Headquarters before offering to PRPs consent decree language significantly at variance with language contained in 10 identified provisions of the Model. In light of Regional experience with the Model to date and in an effort to further streamline the process of finalizing and entering RD/RA consent decrees, OECA has decided to waive this advance consultation requirement.

In lieu of consulting with the Regions in advance of adopting a variant provision, OECA will perform a periodic review of selected provisions from final RD/RA consent decrees to ensure that such provisions remain protective of the interests of the public. Notwithstanding the elimination of the advance consultation requirement, the Regions should continue to comply with the pre-existing delegations (as modified by a recent memorandum entitled ''Office of Enforcement and Compliance Assurance and Regional Roles in Civil Judicial and Administrative Site Remediation Enforcement Cases'' (May 19, 1995). Those delegations require Headquarters' concurrence in settlements which significantly deviate from written EPA policy. Headquarters also expects Regions to engage in timely and effective communication concerning issues that arise in use of the revised Model, and to refrain from development of regional models that can have the effect of producing inconsistency across the country.

In addition, Regions must continue to consult and work with the Department of Justice in drafting and negotiating all consent decrees.

*Effective Date*

The revised Model is effective immediately on the date of this memorandum. It should be used as the basis for all consent decrees which accompany special notice letters sent to the PRPs after that date. In cases where a special notice letter for the site or an initial version of the consent decree has been conveyed to the PRPs prior to the date of this memorandum, but settling defendants have not signed a consent decree as of that date, the government negotiation team will have discretion as to whether to employ the old Model or the revised Model as guidance. In cases where the old Model is used, the United States generally will entertain proposals from PRPs for inclusion of language from the revised Model only to the extent that such proposals do not upset the balance struck in the negotiations between the parties up to that point and do not unduly extend or delay negotiation of the final settlement.

The United States will not renegotiate any RD/RA consent decree which has been signed by settling defendants as of the date of this memorandum.

If you have any questions regarding the revised Model Consent Decree, please contact Steve Botts of OECA's Regional Support Division ((202) 260–5787) or Susan Boushell of OECA's Policy and Program Evaluation Division ((703) 603–9063).

cc:

Jean C. Nelson, General Counsel
Kathryn S. Schmoll, Comptroller
Stephen D. Luftig, Director, Office of Emergency and Remedial Response
Regional Counsel, Regions I–X
Waste Management Division Directors, Regions I–X

## United States Environmental Protection Agency Model CERCLA RD/RA Consent—Decree July, 1995

This model and any internal procedures adopted for its implementation and use are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model or its internal implementing procedures.

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**In the United States District Court for the District of _____ Division**

*United States of America [and State of* _____] Plaintiffs, v. _____, *Inc.,* Defendants. Civil Action No.

**Consent Decree**

*I. Background*

A. The United States of America (''United States''), on behalf of the Administrator of the United States Environmental Protection Agency (''EPA''), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the _____ Superfund Site in _____, _____, together with accrued interest; and (2) performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 CFR Part 300 (as amended) (''NCP'').

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. 9621(f)(1)(F), EPA notified the State of _____ (the ''State'') on _____, 19__ of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such

negotiations and be a party to this Consent Decree.

[D. The State of _____ (the ''State'') has also filed a complaint against the defendants in this Court alleging that the defendants are liable to the State under Section 107 of CERCLA, 42 U.S.C. 9607, and [list state laws cited in the State's complaint], for: _____.]

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. 9622(j)(1), EPA notified the [insert the relevant Federal natural resource trustee(s)] on _____, 19__ of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

F. The defendants that have entered into this Consent Decree (''Settling Defendants'') do not admit any liability to the Plaintiff[s] arising out of the transactions or occurrences alleged in the complaint[s], nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. 9605, EPA placed the Site on the National Priorities List, set forth at 40 CFR Part 300, Appendix B, by publication in the **Federal Register** on _____, 19__, _____ Fed. Reg. ____.

H. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA [or the Settling Defendants, other PRPs at the Site, or the State] commenced on _____, 19__, a Remedial Investigation and Feasibility Study (''RI/FS'') for the Site pursuant to 40 CFR 300.430.

I. EPA [or the Settling Defendants, other PRPs at the Site, or the State] completed a Remedial Investigation (''RI'') Report on _____, __, 19__, and EPA [or the Settling Defendants, other PRPs at the Site, or the State] completed [issued] a Feasibility Study (''FS'') Report on _____, 19__.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on _____, 19__, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

K. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision (''ROD''), executed on _____, 19__, [on which the State had a reasonable opportunity to review and comment/on which the State has given its concurrence.] The ROD includes [EPA's explanation for any significant differences between the final plan and the proposed plan as well as ]a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

L. Based on the information presently available to EPA [and the State], EPA [and the State] believe[s] that the Work will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

M. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President.

N. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

Now, Therefore, it is hereby Ordered, Adjudged, and Decreed:

*II. Jurisdiction*

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. 1331 and 1345, and 42 U.S.C. 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint[s], Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

*III. Parties Bound*

2. This Consent Decree applies to and is binding upon the United States [and the State] and upon Settling Defendants and their [heirs,] successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. 9607(b)(3).

*IV. Definitions*

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

''CERCLA'' shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*

''Consent Decree'' shall mean this Decree and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Decree and any appendix, this Decree shall control.

''Day'' shall mean a calendar day unless expressly stated to be a working day. ''Working day'' shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

''EPA'' shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

''_____'' shall mean the [Insert name of State pollution control agency or environmental protection agency] and any successor departments or agencies of the State. ''Future Response Costs'' shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incur[s] in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, attorneys fees and any monies paid to secure access and/or to secure institutional controls, including the amount of just compensation), XV, and Paragraph 85 of Section XXI. Future Response Costs shall also include all Interim Response Costs and all Interest on the Past Response Costs that has accrued pursuant to 42 U.S.C. 9607(a) during the period from [insert the date identified in the Past Response Costs definition] to the date of entry of this Consent Decree.

''Interim Response Costs'' shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between [insert the date identified in the Past Response Costs definition] and the effective date of this Consent Decree, or (b) incurred prior to the effective date of this Consent Decree but paid after that date.

''Interest,'' shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. 9607(a).

[**Note:** The following definition should be used where the Decree contains a waiver of contribution rights against *de micromis* parties as provided in the final Paragraph of Section XXII (Covenants by Settling Defendants)].

[''Municipal Solid Waste'' shall mean all waste materials generated by households, including single and multi-family residences, and hotels and motels. The term also includes waste materials generated by commercial, institutional, and industrial sources, to the extent such wastes (A) are essentially the same as waste normally generated by households, or (B) are collected and disposed of with other municipal solid waste or sewage sludge as part of normal municipal solid waste collection services and, regardless of when generated, would be considered conditionally exempt small quantity generator waste under regulations issued pursuant to Section 3001(d)(4) of the Solid Waste Disposal Act (42 U.S.C. 6921(d)(4)). Examples of Municipal Solid Waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste. The term does not include combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.]

''National Contingency Plan'' or ''NCP'' shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

''Operation and Maintenance'' or ''O & M'' shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (SOW).

[**Note:** The following definition should be used where the Decree contains a waiver of contribution rights against *de micromis* parties as provided in the final Paragraph of Section XXII (Covenants by Settling Defendants)].

[''Owner, Operator, or Lessee of Residential Property'' shall mean a person who owns, operates, manages, or leases Residential Property and who uses or allows the use of the Residential Property exclusively for residential purposes.]

''Owner Settling Defendants'' shall mean the Settling Defendants listed in Appendix E.

''Paragraph'' shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

''Parties'' shall mean the United States [, the State of _____,] and the Settling Defendants.

''Past Response Costs'' shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through [insert the date of the most recent cost update], plus Interest on all such costs which has accrued pursuant to 42 U.S.C. 9607(a) through such date.

''Performance Standards'' shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section __ of the ROD and Section __ of the SOW [and any modified standards established by EPA pursuant to the ''technical impracticability'' provision of Paragraph 13].

''Plaintiff[s]'' shall mean the United States [and the State of _____].

''RCRA'' shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

''Record of Decision'' or ''ROD'' shall mean the EPA Record of Decision relating to the [Site or __ Operable Unit at the Site] signed on _____, 19__, by the Regional Administrator, EPA Region __, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix A.

''Remedial Action'' shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendants to implement the ROD, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

''Remedial Action Work Plan'' shall mean the document developed pursuant to Paragraph 12 of this Consent Decree and approved by EPA, and any amendments thereto.

''Remedial Design'' shall mean those activities to be undertaken by the Settling Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

''Remedial Design Work Plan'' shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

[**Note:** The following definition should be used where the Decree contains a waiver of contribution rights against *de micromis* parties as provided in the final Paragraph of Section XXII (Covenants by Settling Defendants)]

[''Residential Property'' shall mean single or multi-family residences, including accessory land, buildings, or improvements incidental to such dwellings, which are exclusively for residential use.]

''Section'' shall mean a portion of this Consent Decree identified by a roman numeral.

''Settling Defendants'' shall mean those Parties identified in Appendices D (Non-Owner Settling Defendants) and E (Owner Settling Defendants).

[**Note:** The following definition should be used where the Decree contains a waiver of

contribution rights against *de micromis* parties as provided in the final Paragraph of Section XXII (Covenants by Settling Defendants)]

[''Sewage Sludge'' means solid, semisolid, or liquid residue removed during the treatment of municipal waste water, domestic sewage, or other waste water at or by publicly owned or federally owned treatment works.]

''Site'' shall mean the _____ Superfund Site, [encompassing approximately __ acres, located at [address or description of location] in [name of city], ____ County, [name of state] and depicted generally on the map attached as Appendix C.]

[**Note:** The definition of ''Site'' affects the scope of the covenants not to sue. The definition used should conform with the intended scope of the covenants and the general reservations provided in Section XXI (Covenants Not to Sue by Plaintiff[s].]

[**Note:** The following two definitions should be used where the Decree contains a waiver of contribution rights against *de micromis* parties as provided in the final Paragraph of Section XXII (Covenants by Settling Defendants)]

[''Small Business'' shall mean any business entity that employs no more than 100 individuals and is a ''small business concern'' as defined under the Small Business Act (15 U.S.C. 631 *et seq.*).

''Small Nonprofit Organization'' shall mean any organization that does not distribute any part of its income or profit to its members, directors, or officers, employs no more than 100 paid individuals at the involved chapter, office, or department, and was recognized as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code of 1986.]

''State'' [or ''Commonwealth''] shall mean the State [or Commonwealth] of _____.

[**Note:** Where the state is a party to the consent decree, definitions of ''State Past Response Costs'' and ''State Future Response Costs'' will need to be added to this section as appropriate.]

''Statement of Work'' or ''SOW'' shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

''Supervising Contractor'' shall mean the principal contractor retained by the Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

''United States'' shall mean the United States of America.

''Waste Material'' shall mean (1) any ''hazardous substance'' under Section 101(14) of CERCLA, 42 U.S.C. 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. 9601(33); [(3) any ''solid waste'' under Section 1004(27) of RCRA, 42 U.S.C. 6903(27); and (4) any ''hazardous material'' under [insert appropriate State statutory citation].

''Work'' shall mean all activities Settling Defendants are required to perform under this Consent Decree, except those required by Section XXV (Retention of Records).

*V. General Provisions*

5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendants, to reimburse response costs of the Plaintiff[s], and to resolve the claims of Plaintiff[s] against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendants and approved by EPA pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States [and the State] for Past Response Costs and Future Response Costs as provided in this Consent Decree.

b. The obligations of Settling Defendants to finance and perform the Work and to pay amounts owed the United States [and the State] under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

7. Compliance With Applicable Law

All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

[**Note:** For Consent Decrees in which there is an Owner Settling Defendant, add Paragraph 9, below.]

9. Notice of Obligations to Successors-in-Title

a. Within 15 days after the entry of this Consent Decree, the Owner Settling Defendant(s) shall record [a certified copy of this Consent Decree] [notice of the entry of this Consent Decree] with the Recorder's Office [or Registry of Deeds or other appropriate office], _____ County, State of _____. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to this Consent Decree [and any lien retained by the United States] and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

b. The obligations of each Owner Settling Defendant with respect to the provision of access under Section IX (Access) [and the implementation of institutional controls under Section ____] shall be binding upon any and all such Settling Defendants and any and all persons who subsequently acquire any such interest or portion thereof (hereinafter ''Successors-in-Title''). Within 15 days after the entry of this Consent Decree, each Owner Settling Defendant shall record at the Recorder's

Office [or Registry of Deeds or other appropriate office where land ownership and transfer records are maintained for the property] a notice of obligation to provide access under Section IX (Access) and related covenants, if any. Each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

c. Any Owner Settling Defendant and any Successor-in-Title shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA [and the State] of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance, the Settling Defendants' obligations under this Consent Decree, including their obligations to provide or secure access pursuant to Section IX, shall continue to be met by the Settling Defendants. In addition, if the United States [and the State] approve[s], the grantee may perform some or all of the Work under this Consent Decree. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of the Settling Defendants to comply with the Consent Decree.

*VI. Performance of the Work by Settling Defendants*

[**Note:** Paragraphs 10–12, below, may be modified on a site-by-site basis to reflect site needs and Regional practice.]

10. Selection of Supervising Contractor

a. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA [after a reasonable opportunity for review and comment by the State.] Within 10 days after the lodging of this Consent Decree, Settling Defendants shall notify EPA [and the State] in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA [and the State] and must obtain an authorization to proceed from EPA[, after a reasonable opportunity for review and comment by the State,] before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA [and the State] a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA [and the State] of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) hereof.]

11. Remedial Design

a. Within ____ days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10, Settling Defendants shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site (''Remedial Design Work Plan'' or ''RD Work Plan''). The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. Within ____ days after EPA's issuance of an authorization to proceed, the Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. 1910.120.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: [List all items which should be included in the Remedial Design Work Plan. This list will be based on site-specific factors and may include the following items: (1) Design sampling and analysis plan (including, but not limited to, a Remedial Design Quality Assurance Project Plan (RD QAPP) in accordance with Section VIII (Quality Assurance, Sampling and Data Analysis)); (2) a treatability study; (3) a Pre-design Work Plan; (4) a preliminary design submittal; (5) an intermediate design submittal; (6) a pre-final/final design submittal; and (7) a Construction Quality Assurance Plan.] In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Settling Defendants shall implement the Remedial Design Work Plan. The Settling Defendants shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The preliminary design submittal shall include, at a minimum, the following: (1) Design criteria; (2) results of treatability studies; (3) results of additional field sampling and pre-design work; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

e. The intermediate design submittal, if required by EPA or if independently submitted by the Settling Defendants, shall be a continuation and expansion of the preliminary design. Any value engineering proposals must be identified and evaluated during this review.

f. The pre-final/final design submittal shall include, at a minimum, the following: (1) Final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan (CQAPP); (4) Field Sampling Plan (directed at measuring progress towards

meeting Performance Standards); and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official (''QA Official''), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.]

12. Remedial Action

a. Within ____ days after the approval of the final design submittal, Settling Defendants shall submit to EPA and the State, a work plan for the performance of the Remedial Action at the Site (''Remedial Action Work Plan''). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. 1910.120.

b. The Remedial Action Work Plan shall include the following: [List all activities for which methodologies, plans and schedules should be included in the Remedial Action Work Plan. This list will be based on site specific factors and may include the following: (1) The schedule for completion of the Remedial Action; (2) method for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action plans; (4) methodology for implementation of the Construction Quality Assurance Plan; (5) a groundwater monitoring plan; (6) methods for satisfying permitting requirements; (7) methodology for implementation of the Operation and Maintenance Plan; (8) methodology for implementation of the Contingency Plan; (9) tentative formulation of the Remedial Action team; (10) construction quality control plan (by constructor); and (11) procedures and plans for the decontamination of equipment and the disposal of contaminated materials.] The Remedial Action Work Plan also shall include a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the Settling Defendants' Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Settling Defendants shall implement the activities required under the Remedial Action Work Plan. The Settling Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

13. The Settling Defendants shall continue to implement the Remedial Action and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

[**Note:** A ''technical impracticability'' provision may be inserted here in appropriate cases. If a technical impracticability provision is included, the definition of Performance Standards should be modified to incorporate any modified Performance Standards that may be issued by EPA pursuant to a technical impracticability provision.]

14. Modification of the SOW or Related Work Plans

a. If EPA determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of this Paragraph 14 and Paragraphs 48 and 49 only, the ''scope of the remedy selected in the ROD'' is: [site-specific definition to be inserted here]

c. If Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 66 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Settling Defendants shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

15. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff[s] that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

16. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The Settling Defendants shall include in the written notification the following information, where available: (1) The name and location of the facility to which the Waste Material are to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the information required by Paragraph 16.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

*VII. Remedy Review*

[**Note:** This Section may need to be modified or omitted in consent decrees where the

United States is not giving a full covenant not to sue subject to pre and post certification reservations (e.g., non-final operable unit consent decrees). This Section may also be omitted where no hazardous substances, pollutants or contaminants will remain at the site after completion of the remedial action.]

17. *Periodic Review.* Settling Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

18. *EPA Selection of Further Response Actions.* If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

19. *Opportunity To Comment.* Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

20. *Settling Defendants' Obligation To Perform Further Response Actions.* If EPA selects further response actions for the Site, the Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 81 or Paragraph 82 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 81 or Paragraph 82 of Section XXI (Covenants Not To Sue by Plaintiff[s]) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 65 (record review).

21. *Submissions of Plans.* If Settling Defendants are required to perform the further response actions pursuant to Paragraph 20, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

[Alternative: The preceding two Paragraphs (20 & 21.) may be omitted (1) for Settling Defendants whose liability has been established by court order or judgment; (2) for Settling Defendants who agree to admit or not to contest liability in the event that the United States institutes an action for further relief based on the reservations set forth in Paragraphs 81 or 82 of the Covenant Not To Sue; or (3) in other appropriate cases.]

*VIII. Quality Assurance, Sampling, and Data Analysis*

22. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all [treatability, design, compliance and monitoring] samples in accordance with ''EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation,'' (EPA QA/R5; ''Preparing Perfect Project Plans,'' (EPA /600/9–88/087), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan (''QAPP'') that is consistent with the SOW, the NCP and [applicable guidance documents.] If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall ensure that EPA [and State] personnel and its [their] authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the [''Contract Lab Program Statement of Work for Inorganic Analysis'' and the ''Contract Lab Program Statement of Work for Organic Analysis,'' dated February 1988], and any amendments made thereto during the course of the implementation of this Decree. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

23. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA [and the State] or their authorized representatives. Settling Defendants shall notify EPA [and the State] not less than [28] days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA [and the State] shall have the right to take any additional samples that EPA [or the State] deem necessary. Upon request, EPA [and the State] shall allow the Settling Defendants to take split or duplicate samples of any samples it [they] take[s] as part of the Plaintiff's[']oversight of the Settling Defendants' implementation of the Work.

24. Settling Defendants shall submit to EPA [and the State] ____ copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

25. Notwithstanding any provision of this Consent Decree, the United States [and the State] hereby retain[s] all of its [their] information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

*IX. Access [and Institutional Controls]*

26. Commencing upon the date of lodging of this Consent Decree, the Settling Defendants agree to provide the United States[, the State,] and its [their] representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to the property is controlled by Settling Defendants, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

a. Monitoring the Work;

b. Verifying any data or information submitted to the United States [or the State];

c. Conducting investigations relating to contamination at or near the Site;

d. Obtaining samples;

e. Assessing the need for, planning, or implementing additional response actions at or near the Site;

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV; and

g. Assessing Settling Defendants' compliance with this Consent Decree.

27. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendants, Settling Defendants shall use best efforts to secure from such persons access for Settling Defendants, as well as for the United States [and the State] and its [their] representatives, including, but not limited to, their contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph ''best efforts'' includes the payment of reasonable sums of money in consideration of access. [NOTE: It may be appropriate to delete the preceding sentence where the property to which access is needed is owned by a non-settling party who is a PRP. (See guidance entitled ''Model RD/RA Consent Decree: Acceptable Modifications to Model Language (Directive No. 2),'' March 25, 1992)] If any access required to complete the Work is not obtained within 45 days of the date of lodging of this Consent Decree, or within 45 days of the date EPA notifies the Settling Defendants in writing that additional access beyond that previously secured is necessary, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps Settling Defendants have taken to attempt to obtain access. The United States [or the State] may, as it deems appropriate, assist Settling Defendants in obtaining access. Settling Defendants shall reimburse the United States [or the State], in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access.

28. Notwithstanding any provision of this Consent Decree, the United States [and the State] retain[s] all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

[Add institutional controls provisions as appropriate]

*X. Reporting Requirements*

29. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the State ____ copies of written [monthly] progress reports that: (a) Describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous [month]; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous [month]; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous [month]; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next [six weeks] and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous [month] and those to be undertaken in the next [six weeks]. Settling Defendants shall submit these progress reports to EPA and the State by the [tenth day of every month] following the lodging of this Consent Decree until [EPA notifies the Settling Defendants pursuant to Paragraph 49.b of Section XIV (Certification of Completion).] If requested by EPA [or the State], Settling Defendants shall also provide briefings for EPA [and the State] to discuss the progress of the Work.

30. The Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

31. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region ____, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

32. Within 20 days of the onset of such an event, Settling Defendants shall furnish to Plaintiff[s] a written report, signed by the Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

33. Settling Defendants shall submit ____ copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit ____ copies of all such plans, reports and data to the State.

34. All reports and other documents submitted by Settling Defendants to EPA (other than the [monthly] progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendants.

*XI. EPA Approval of Plans and Other Submissions*

35. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) Approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within ____ days, except where to do so would cause serious disruption to the

Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

36. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 35 (a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 35(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

37. a. Upon receipt of a notice of disapproval pursuant to Paragraph 35(d), Settling Defendants shall, within ____ days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the ____-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 38 and 39.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 35(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

38. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

39. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

40. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

*XII. Project Coordinators*

41. Within 20 days of lodging this Consent Decree, Settling Defendants[, the State] and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

42. Plaintiff[s] may designate other representatives, including, but not limited to, EPA [and State] employees, and federal [and State] contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

[43. EPA's Project Coordinator and the Settling Defendants' Project Coordinator will meet, at a minimum, on a monthly basis.]

*XIII. Assurance of Ability to Complete Work*

44. Within 30 days of entry of this Consent Decree, Settling Defendants shall establish and maintain financial security in the amount of $ [insert estimated cost of Work] in one or more of the following forms:

(a) A surety bond guaranteeing performance of the Work;

(b) One or more irrevocable letters of credit equalling the total estimated cost of the Work;

(c) A trust fund;

(d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Defendants;

(e) A demonstration that one or more of the Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f); or

(f) [Insert any other method(s) appropriate to the particular case.].

45. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 44 (d) of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 44 (d) or (e), they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA[, after a reasonable opportunity for review and comment by the State,] determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendants shall, within 30 days of

receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 44 of this Consent Decree. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

46. If Settling Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 44 above after entry of this Consent Decree, Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Settling Defendants shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

47. Settling Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Defendants may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

*XIV. Certification of Completion*

[**Note:** Paragraph 48, below, (Completion of the Remedial Action), is only required for Site-wide or Final Operable Unit Consent Decrees, in which the United States has decided to grant a full covenant not to sue (i.e., where Certification of Completion of the Remedial Action is necessary to trigger a full covenant not to sue under Sections 106 and 107 of CERCLA).]

48. Completion of the Remedial Action

a. Within 90 days after Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants[,] [and] EPA [,and the State]. If, after the pre-certification inspection, the Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a registered professional engineer and the Settling Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

''To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.''

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the ''scope of the remedy selected in the ROD,'' as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiff[s]). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

49. Completion of the Work

a. Within 90 days after Settling Defendants conclude that all phases of the Work (including O & M), have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants[,] [and] EPA [and the State]. If, after the pre-certification inspection, the Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work. Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the ''scope of the remedy selected in the ROD,'' as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance

with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

*XV. Emergency Response*

50. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 51, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendants shall notify the EPA [Emergency Response Unit], Region ____. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA [or, as appropriate, the State] take[s] such action instead, Settling Defendants shall reimburse EPA [and the State] all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Reimbursement of Response Costs).

51. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States[, or the State,] a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiff[s]).

*XVI. Reimbursement of Response Costs*

52. Within 30 days of the effective date of this Consent Decree, Settling Defendants shall:

[a. ] Pay to the EPA Hazardous Substance Superfund $_____, in reimbursement of Past Response Costs, by FedWire Electronic Funds Transfer (''EFT'' or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number _____, the EPA Region and Site/Spill ID #____ [Insert 4-digit no.; first 2 numbers represent the Region (01–10), second 2 numbers are Region's Site/Spill Identifier number], and DOJ case number _____. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of _____ following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. Settling Defendants shall send notice that such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and [names and mailing addresses of the Regional Financial Management Officer and any other receiving officials at EPA].

[**Note:** If the amount owed is less than $10,000, the Settling Defendants should be directed to pay by check instead of EFT. In this event, use the following language for Paragraph 52.a:

[a. ] Pay $_____, in reimbursement of Past Response Costs, by a certified or cashier's check or checks made payable to ''U.S. Department of Justice.'' The Settling Defendants shall forward the check(s) to [Insert the address of the Financial Litigation Unit of the U.S. Attorney's Office for the District of _____], referencing U.S.A.O. file number _____, the EPA Region and Site/Spill ID #_____ [Insert 4-digit no.; first 2 numbers represent the Region (01–10), second 2 numbers are the Region's Site/Spill ID no.], the DOJ case number _____, and the name and address of the party making payment, and shall send copies of the check(s) to the United States as specified in Section XXVI (Notices and Submissions) and [Insert the names and mailing addresses of the Regional Financial Management Officer and any other receiving officials at EPA].]

[b. Pay to the State $_____ in the form of a certified check or checks made payable to _____, in reimbursement of State Past Response Costs. The Settling Defendants shall send the certified check(s) to _____.]

53. [a. ] Settling Defendants shall reimburse the EPA Hazardous Substance Superfund for all Future Response Costs not inconsistent with the National Contingency Plan. The United States will send Settling Defendants a bill requiring payment that includes a [Insert name of standard Regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Also insert name of DOJ-prepared cost summary which would reflect costs incurred by DOJ and its contractors, if any.] on a [periodic] basis. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 54. The Settling Defendants shall make all payments required by this Paragraph in the form of a certified or cashier's check or checks made payable to ''EPA Hazardous Substance Superfund'' and referencing the EPA Region and Site/Spill ID #_____ [Insert 4-digit no.; first 2 numbers represent the Region (01–10), second 2 numbers are the Region's Site/Spill Identifier number], the DOJ case number _____, and the name and address of the party making payment. The Settling Defendants shall send the check(s) to [Insert appropriate Regional Superfund Lockbox number and address] and shall send copies of the check(s) to the United States as specified in Section XXVI (Notices and Submissions) and [Insert the names and mailing addresses of any other receiving officials at EPA].

[b. Settling Defendants shall reimburse the State for all State Future Response Costs not inconsistent with the National Contingency Plan. The State will send Settling Defendants a bill requiring payment that includes a [Insert name of standard State-prepared cost summary, which includes direct and indirect costs incurred by the State and its contractors] on a [periodic] basis. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 54. The Settling Defendants shall make all payments to the State required by this Paragraph in the manner described in Paragraph 52.b.]

54. Settling Defendants may contest payment of any Future Response Costs under Paragraph 53 if they determine that the United States [or the State] has made an accounting error or if they

allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States [(if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed)] pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States [or the State] in the manner described in Paragraph 53. Simultaneously, the Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of _____ and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), [and the State] a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States [or the State] prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States [or the State, if State costs are disputed,] in the manner described in Paragraph 53. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States [or the State, if State costs are disputed] in the manner described in Paragraph 53; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States [and the State] for its [their] Future Response Costs.

55. In the event that the payments required by Paragraph 52 are not made within 30 days of the effective date of this Consent Decree or the payments required by Paragraph 53 are not made within 30 days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs [and State Past Response Costs] under this Paragraph shall begin to accrue 30 days after the effective date of this Consent Decree. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 53.

*XVII. Indemnification and Insurance*

56. a. The United States [and the State] do[es] not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States[, the State,] and its [their] officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States [and the State] all costs it [they] incur[s] including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States [or the State] based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. [Neither] the United States [nor the State] shall [not] be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States [or the State].

b. The United States [and the State] shall give Settling Defendants notice of any claim for which the United States [or the State] plans to seek indemnification pursuant to Paragraph 56.a., and shall consult with Settling Defendants prior to settling such claim.

57. Settling Defendants waive all claims against the United States [and the State] for damages or reimbursement or for set-off of any payments made or to be made to the United States [or the State], arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States [and the State] with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

58. No later than 15 days before commencing any on-site Work, Settling Defendants shall secure, and shall maintain [until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 48.b. of Section XIV (Certification of Completion)] comprehensive general liability insurance with limits of ____ million dollars, combined single limit, and automobile liability insurance with limits of ____ million dollars, combined single limit, naming the United States [and the State] as [an] additional insured[s]. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA [and the State] certificates of such insurance and a copy

of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Defendants demonstrate by evidence satisfactory to EPA [and the State] that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

*XVIII. Force Majeure*

59. ''Force majeure,'' for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise ''best efforts to fulfill the obligation'' includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. ''Force Majeure'' does not include financial inability to complete the Work or a failure to attain the Performance Standards.

60. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, [the Director of the Hazardous Waste Management Division, EPA Region ____], within [insert period of time] of when Settling Defendants first knew that the event might cause a delay. Within [____] days thereafter, Settling Defendants shall provide in writing to EPA [and the State] an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

61. If EPA[, after a reasonable opportunity for review and comment by the State,] agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA[, after a reasonable opportunity for review and comment by the State,] for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA[, after a reasonable opportunity for review and comment by the State,] does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA[, after a reasonable opportunity for review and comment by the State,] agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

62. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 59 and 60, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

*XIX. Dispute Resolution*

[**Note:** The dispute resolution procedures set forth in this Section may be supplemented to provide for use of mediation in appropriate cases. Mediation provisions should contain time limits to ensure that mediation does not cause delays in dispute resolution that could delay the remedial action.]

63. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

64. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

65. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within ____ days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States [and the State] a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants.

The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 66 or Paragraph 67.

b. Within ____ days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling

Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 66 or 67. Within —— days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 66 or 67, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 66 and 67.

66. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) The adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Waste Management Division, EPA Region ____, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 66.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 66.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 66.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 66.a.

67. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 65, the Director of the Waste Management Division, EPA Region ____, will issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph M of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

68. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 77. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

*XX. Stipulated Penalties*

69. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 70 and 71 to the United States [and the State—specify percentage split] for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). ''Compliance'' by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

[70. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:

| *Penalty Per Violation Per Day* | *Period of Noncompliance* |
|---|---|

b. [List violations or compliance milestones] The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports [or other written documents] pursuant to Paragraphs _____:

| *Penalty Per Violation* | *Per Day Period of Noncompliance* |
|---|---|

72. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 85 of Section XXI (Covenants Not to Sue by Plaintiff[s]), Settling Defendants shall be liable for a stipulated penalty in the amount of _____.]

73. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1)

With respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Waste Management Division, EPA Region ____, under Paragraph 66.b. or 67.a. of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

74. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA [and the State] may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendants of a violation.

75. All penalties accruing under this Section shall be due and payable to the United States [and the State] within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to ''EPA Hazardous Substances Superfund,'' shall be mailed to [Insert the Regional Lockbox number and address], shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #_____ [Insert 4-digit no; first 2 numbers represent the Region (01–10), second 2 numbers are the Region's Site/Spill Identifier number], the DOJ Case Number _____, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions), and to [Insert the names and mailing addresses of any other receiving officials at EPA.]. [Where a State is entitled to a portion of the stipulated penalties, insert procedures for payment to State.]

76. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

77. Penalties shall continue to accrue as provided in Paragraph 73 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA [and the State] within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA [and the State] within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States [or the State] into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA [and the State] or to Settling Defendants to the extent that they prevail.

78. a. If Settling Defendants fail to pay stipulated penalties when due, the United States [or the State] may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 75.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States [or the State] to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.[1]

79. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

*XXI. Covenants Not to Sue By Plaintiff[s]*

[**Note:** The first version of Paragraph 80, below, is only used for situations in which the United States has decided not to grant a full covenant not to sue, such as non-final Operable Unit consent decrees. In such cases, Paragraphs 81–83 generally should not be used in the consent decree.]

80. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraph 84 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA [and Section 7003 of RCRA [2]] for performance of the Work [and for recovery of Past Response Costs and Future Response Costs]. These covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 52 of Section XVI (Reimbursement of Response Costs). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

[**Note:** Paragraphs 80–83, below, should only be used in Consent Decrees in which the United States has decided to grant a full covenant not to sue.]

80. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 81, 82, and 84 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA [and Section

[1] A provision requiring EPA to elect between seeking stipulated and statutory penalties for a particular consent decree violation may be substituted here in appropriate cases.

[2] Note that when a 7003 covenant is included, Section 7003(d) of RCRA requires that an opportunity for a public meeting in the affected area be provided.

7003 of RCRA [3]] relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 52 of Section XVI (Reimbursement of Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 48.b of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

81. *United States' Pre-certification reservations.* Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

(i) conditions at the Site, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received, in whole or in part, and these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

82. *United States' Post-certification reservations.* Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

(i) Conditions at the Site, previously unknown to EPA, are discovered, or

(ii) Information, previously unknown to EPA, is received, in whole or in part, and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

[3] See footnote #1, *supra*.

83. For purposes of Paragraph 81, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 82, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

[**Note:** Include Paragraph 84 in all Consent Decrees.]

84. *General reservations of rights.* The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 80. The United States [and the State] reserve[s], and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

(1) Claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

(2) Liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

(3) Liability for future disposal of Waste Material at the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA;

(4) Liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

(5) Criminal liability;

(6) Liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and

[(7) Liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans);] [4]

[4] The Regions may omit this reservation in appropriate circumstances, such as in exchange for a premium or other consent decree provision(s), taking into account the risk being assumed by the Agency.

[**Note:** Subparagraphs 8 through 10, below, should be used only where appropriate.]

[(8) Previously incurred costs of response above the amounts reimbursed pursuant to Paragraph 52;]

[(9) Liability for additional operable units at the Site or the final response action;]

[(10) Liability for costs that the United States will incur related to the Site but are not within the definition of Future Response Costs.]

85. *Work Takeover.* In the event EPA determines that Settling Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 66, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVI (Reimbursement of Response Costs).

86. Notwithstanding any other provision of this Consent Decree, the United States [and the State] retain[s] all authority and reserve[s] all rights to take any and all response actions authorized by law.

[**Note:** If the State is a Co-plaintiff, insert the State's Covenant Not to Sue the Settling Defendants and Reservation of Rights.]

*XXII. Covenants By Settling Defendants*

87. *Covenant Not to Sue.* Subject to the reservations in Paragraph 88, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States [or the State] with respect to [FOR FINAL CONSENT DECREES: the Site] [FOR OU DECREES: the Work, past response actions, and [IF ADDRESSED] Past and Future Response Costs as defined herein] or this Consent Decree, including, but not limited to:,

a. Any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

[b. Any claims against the United States, including any department, agency or instrumentality of the United

States under CERCLA Sections 107 or 113 related to the Site,] or

c. Any claims arising out of response activities at the Site, including claims based on EPA's [and the State's] selection of response actions, oversight of response activities or approval of plans for such activities.

88. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA;

89. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. 9611, or 40 C.F.R. 300.700(d).

[90. Settling Defendants agree to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against the following persons:

a. Any person (i) whose liability to Settling Defendants with respect to the Site is based solely on CERCLA Section 107(a) (3) or (4), (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of only Municipal Solid Waste or Sewage Sludge owned by such person, and (iii) who is a Small Business, a Small Non-profit Organization, or the Owner, Operator, or Lessee of Residential Property; and

b. Any person (i) whose liability to Settling Defendants with respect to the Site is based solely on CERCLA § 107(a) (3) or (4), and (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of 55 gallons or less of liquid materials containing hazardous substances, or 100 pounds or less of solid materials containing hazardous substances, except where EPA has determined that such material contributed or could contribute significantly to the costs of response at the Site.

[**Note:** provision relating to *de minimis* parties, if appropriate, may be inserted here.]

*XXIII. Effect of Settlement; Contribution Protection*

91. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

92. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. 9613(f)(2) for matters addressed in this Consent Decree. [''Matters addressed'' should be defined explicitly in appropriate cases, e.g., where the scope of contribution protection may otherwise be unclear under the circumstances of the case.]

93. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States [and the State] in writing no later than 60 days prior to the initiation of such suit or claim.

94. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States [and the State] within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States [and the State] within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

95. In any subsequent administrative or judicial proceeding initiated by the United States [or the State] for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States [or the State] in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiff[s]).

*XXIV. Access to Information*

96. Settling Defendants shall provide to EPA [and the State], upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA [and the State], for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

97. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff[s] under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. 9604(e)(7), and 40 CFR 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 CFR Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA [and the State], or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the

Plaintiff[s] with the following: (1) The title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information: and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

98. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

*XXV. Retention of Records*

99. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 49.b of Section XIV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 49.b of Section XIV (Certification of Completion), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

100. At the conclusion of this document retention period, Settling Defendants shall notify the United States [and the State] at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States [or the State], Settling Defendants shall deliver any such records or documents to EPA [or the State]. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) The title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

101. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

*XXVI. Notices and Submissions*

102. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, [the State,] and the Settling Defendants, respectively.

*As to the United States:*

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ # _____
and
Director, Waste Management Division
United States Environmental Protection Agency
Region ____

---

*As to EPA:*

[Name]
EPA Project Coordinator
United States Environmental Protection Agency
Region ____

---

*[As to the State:*

[Name]
State Project Coordinator
[Address]]

*As to the Settling Defendants:*

[Name]
Settling Defendants' Project Coordinator
[Address]

*XXVII. Effective Date*

103. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

*XXVIII. Retention of Jurisdiction*

104. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

*XXIX. Appendices*

105. The following appendices are attached to and incorporated into this Consent Decree:

''Appendix A'' is the ROD.

''Appendix B'' is the SOW.

''Appendix C'' is the description and/or map of the Site.

''Appendix D'' is the complete list of the Settling Defendants.

[''Appendix E'' is the complete list of the Owner Settling Defendants.]

*XXX. Community Relations*

106. Settling Defendants shall propose to EPA [and the State] their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA [and the State] in providing information regarding the Work to the public. As requested by EPA [or the State], Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA [or the State] to explain activities at or relating to the Site.

*XXXI. Modification*

107. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Defendants. All such modifications shall be made in writing.

108. Except as provided in Paragraph 14 (''Modification of the SOW or related Work Plans''), no material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants.

109. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

*XXXII. Lodging and Opportunity for Public Comment*

110. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), and 28 CFR 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

111. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

*XXXIII. Signatories/Service*

112. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

113. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

114. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS ____ DAY OF _____, 19____ .

_____
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. _____, relating to the _____ Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

_____
[Name]
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

_____
[Name]
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

_____
[Name]
Assistant United States Attorney
_____District of _____
U.S. Department of Justice
[Address]

[_____] _____
[Name]
Assistant Administrator for Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460
[WHERE OECA CONCURRENCE REQUIRED]

[_____] _____
[Name]
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460
[WHERE OECA CONCURRENCE REQUIRED OR OECA ATTORNEY IS PART OF NEGOTIATION TEAM]

_____
[Name]
Regional Administrator, Region ____
U.S. Environmental Protection Agency
[Address]

_____
[Name]
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region ____
[Address]

United States v. _____
Consent Decree Signature Page
FOR THE STATE OF _____
Date:_____ _____

_____
[Name]
[Title]
[Address]

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. _____, relating to the _____ Superfund Site.

FOR _____ COMPANY, INC. *
Date: _____

_____
[Name—Please Type]
[Title—Please Type]
[Address—Please Type]

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: [Please Type] _____
Title: _____
Address: _____
Tel. Number: _____

[FR Doc. 95–18482 Filed 7–27–95; 8:45 am]
BILLING CODE 6560–50–P

## FEDERAL RESERVE SYSTEM

### Robert T. Heath; Change in Bank Control Notice

### Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 11, 1995.

*A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Robert T. Heath, individually and as trustee for the Pennington/Heath Trust,* Sebastian, Florida; to vote at least 57 percent of of the voting shares of First National Bancshares of Newton, Inc., Newton, Illinois, and thereby indirect control First National Bank in Newton, Newton, Illinois.

Board of Governors of the Federal Reserve System, July 24, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95–18566 Filed 7–27–95; 8:45 am]

BILLING CODE 6210–01–F

## National Australia Bank Limited; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in nonbanking activities that the Board has determined to be closely related to banking and permissible for bank holding companies, or to engage in such activities. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 24, 1995.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. National Australia Bank Limited, Melbourne, Australia, National Equities Limited, Melbourne, Australia, National Australia Group (UK) Limited, London, England, National Americas Holdings Limited, London, England, and MNC Acquisition Co., Melbourne, Australia*; to become bank holding companies by acquiring 100 percent of the voting shares of Michigan National Corporation, Farmington Hills, Michigan (MNC), and thereby indirectly acquire Michigan National Bank, Farmington Hills, Michigan, and Bloomfield Hills Bancorp, Inc., Bloomfield Hills, Michigan, and its subsidiary, Bank of Bloomfield Hills, Bloomfield Hills, Michigan.

In connection with this application, Applicant also has applied to acquire Independence One Capital Management Corp., Farmington Hills, Michigan, and thereby engage in providing discretionary and nondiscretionary investment advice, pursuant to § 225.25(b)(4) of the Board's Regulation Y; MNC Leasing Company, Detroit, Michigan, and thereby engage in leasing real and personal property and equipment, pursuant to § 225.25(b)(5) of the Board's Regulation Y; Independence One Life Insurance Company, Phoenix, Arizona, and thereby engage in underwriting reinsurance of credit life and credit disability risk, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y; Michigan Bank, F.S.B., Troy, Michigan, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y; and Independence One Asset Management Corporation, Irvine, California, and thereby engage in providing asset management, servicing and collection activities, pursuant to Board Order. Applicant also has applied to exercise an option to acquire up to 19.9 percent of the voting shares of MNC.

Board of Governors of the Federal Reserve System, July 24, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95–18570 Filed 7–27–95; 8:45 am]

BILLING CODE 6210–01–F

## National City Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 11, 1995.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. National City Bancshares, Inc.*, Evansville, Indiana; to engage, through United Federal Savings Bank, Vincennes, Indiana, in acting as agent in the sale of credit life, mortgage life, and

credit accident and health insurance directly related to extensions of credit, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 24, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95–18569 Filed 7–27–95; 8:45 am]

BILLING CODE 6210–01–F

## South Banking Company; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 11, 1995.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. South Banking Company,* Alma, Georgia; to acquire 100 percent of the voting shares of Pineland State Bank, Metter, Georgia.

Board of Governors of the Federal Reserve System, July 24, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95–18568 Filed 7–27–95; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL TRADE COMMISSION

## Regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986; Information Collection Requirement

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of application to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) for clearance of information collection requirements contained in the Regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986.

**SUMMARY:** This publication provides notice that the Federal Trade Commission is seeking renewed approval for three years from OMB for the information collection requirements contained in the Regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986. The present OMB approval for the information collection requirements is scheduled to expire on August 31, 1995.

The Smokeless Tobacco Act requires, among other things, that manufacturers, packagers, and importers of smokeless tobacco products include health warnings on packages and in advertisements. The Act also requires each manufacturer, packager, and importer of a smokeless tobacco product to submit a plan to the Commission that specifies the methods used to rotate, display, and distribute the warning statements required to appear in advertising and labeling. Section 3(d) directs the Commission to approve plans that provide for rotation, display, and distribution of the warning statements in accordance with the regulations. All the affected companies have previously filed plans, but the plan submission requirement continues to apply to a company that amends its plans, or to a new company that enters the market.

### Estimate of Information Collection Burden

In 1986, staff estimates that as many as ten domestic and four foreign smokeless tobacco companies would submit plans specifying the method used to rotate, display, and distribute health warnings in their labeling and advertising. This prediction was accurate. Fourteen plans were received.

When the regulations were first proposed, representatives of the Smokeless Tobacco Council, Inc., indicated that six companies that it represented would require a total of 700 to 800 hours (or about 133 hours apiece, on average) to prepare the required plans. We also assumed that the other companies, whose plans were prepared by other representatives, would require more time, on average, and used 150 hours per plan to account for the remainder of the expected submissions. Based on these assumptions staff estimated that no more than 2,000 hours would be spent to prepare and submit compliance plans. (Six companies total=800 hours, plus eight companies at 150 hours=1,200 hours.) The Commission provided a burden estimate to OMB of 2,000 hours for the reporting requirements.

In 1992, the Commission proposed amendments to the rotation of health warnings on point-of-sale and non-point-of-sale promotional materials. Pursuant to the proposed amendment, affected firms will have to submit new plans for Commission approval. The amendment of previously submitted plans to incorporate plans for promotional materials should require less time than was devoted to the original submissions. As in 1992, there is no substantial basis for calculating the proportion of the original burden estimate that will be attributable to the amendment process and accordingly, the Commission proposes to retain the existing burden estimate for purposes of seeking this extension.

**DATES:** Comments on this application must be submitted on or before August 28, 1995.

**ADDRESSES:** Send comments both to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, ATN: Desk Officer for the Federal Trade Commission, and the Office of the Secretary, Room 159, Federal Trade Commission, Washington, D.C. 20580. Copies of the application may be obtained from the Public Reference Section, Room 130, Federal Trade Commission, Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:**

Phillip S. Priesman, Attorney, Federal Trade Commission, Washington, D.C. 20580 (202) 326–2484.

**Stephen Calkins,**

*General Counsel.*

[FR Doc. 95–18595 Filed 7–27–95; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

**[ATSDR–96]**

### ATSDR's Final Criteria for Determining the Appropriateness of a Medical Monitoring Program Under CERCLA

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** This notice announces the criteria for determining the appropriateness of a medical monitoring program under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Draft criteria were published for public comment on September 9, 1994 (59 FR 46648). The public comment period ended October 24, 1994. Comments were received from 15 individuals representing States, industry, activist groups, and environmental medicine clinics. This document reflects those comments received on the draft criteria.

**ADDRESSES:** Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–31, Atlanta, Georgia 30333, telephone (404) 639–6200.

**FOR FURTHER INFORMATION CONTACT:** Dr. Wendy E. Kaye, Chief, Epidemiology and Surveillance Branch, Division of Health Studies, ATSDR, telephone (404) 639–6203.

**SUPPLEMENTARY INFORMATION:** Section 104(i)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended [42 U.S.C. 9604(i)(9)], provides for the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) to initiate a health surveillance program for populations at significantly increased risk of adverse health effects as a result of exposure to hazardous substances released from a facility. A program included under health surveillance is referred to as ''Medical Monitoring or Screening'' by ATSDR and is defined in the legislation as ''the periodic medical testing to screen people at significant increased risk for disease.'' ATSDR has established criteria to determine when medical monitoring is an appropriate health activity and the requirements for establishing a medical monitoring program at a site. The legislation also states that a mechanism to refer people for treatment should be included in the program. Statutory language only allows ATSDR to provide medical care or treatment in cases of public health emergencies as declared by the President.

#### Background

ATSDR is responsible for the public health-related activities of CERCLA. ATSDR's primary initial response at a hazardous waste site is the public health assessment, which is required for every site on the National Priorities List (NPL). A public health assessment can also be conducted in response to a petition from the public. Other important components of ATSDR's initial response at sites include health consultations and public health advisories. During the process of developing the public health assessments and health advisories, ATSDR invites the participation of communities through a variety of avenues such as public meetings, public availability sessions, and Community Assistance Panels (CAPs). The documents produced by ATSDR during the process are placed in a public repository to allow the public access to the documents. The public health assessments, health consultations, and public health advisories undergo review by ATSDR to determine if follow-up health-related activities are needed for populations at risk in the affected community.

The types of follow-up health activities recommended for a site will depend on the amount of information on the possible exposures and their suspected pathways. In any case in which an association has not been established between an exposure and a specific adverse health outcome, several research and health education activities may be considered. Those activities could include health outcome studies, an exposure assessment at the site, epidemiologic studies, or professional education.

ATSDR's Division of Health Assessment and Consultation has established a program for the investigation of exposures in communities which enables a more timely response to questions on whether individuals in a community are being exposed. The program incorporates a variety of industrial hygiene techniques for measuring chemicals in the environment, as well as selected biological markers of exposure.

The Division of Health Education provides a wide variety of services to educate health care professionals and communities on the effects of exposures to hazardous substances. Activities in a community around a hazardous waste site may include conducting grand rounds for health care providers on the effects of a specific chemical, providing fact sheets on chemicals, conducting workshops on clues to environmental disease, and producing case studies in environmental medicine.

The Division of Health Studies is responsible for conducting epidemiologic research, including several types of studies (cluster investigations, disease and symptom prevalence studies, analytic epidemiologic studies), surveillance programs, and exposure registries. Cluster investigations and disease and symptom prevalence studies investigate the occurrence of disease in populations. Analytic epidemiology studies are conducted to evaluate the causal nature of associations between exposure to hazardous substances and disease outcomes. The surveillance program focuses on exposures to substances at hazardous waste sites and includes systems that follow populations exposed to hazardous wastes because of where they live or their occupation. It also includes surveillance of emergency events in which hazardous substances are released into the environment. The National Exposure Registry maintains a listing of people exposed to hazardous substances. The Registry is composed of chemical specific subregistries. The chemicals are selected from the ATSDR/EPA priority list of hazardous substances.

Medical monitoring is considered one of several follow-up health activity options under the site-specific work conducted by ATSDR. A medical monitoring program for the community around a site will be considered with other health follow-up activities when the information from ATSDR's initial response at the site is reviewed. In cases in which there is no known association between the exposure and specific adverse health effects (which could include health outcomes, illnesses, or markers of effect), medical monitoring is not an appropriate public health activity. In cases in which there is limited information on a specific health effect's relationship to an exposure, then options such as epidemiologic surveillance, a disease and symptom prevalence study, or an epidemiologic study are more appropriate. When adequate information exists that links exposure to a chemical with a specific adverse health effect, further consideration will be given to the appropriateness of medical monitoring in that population.

Medical monitoring should be directed toward a target community identified as being at ''significant increased risk for disease'' on the basis of its exposure. Significant increased risk will vary for particular sites depending upon such factors as the underlying risk of the selected outcome, the risk attributable to the exposure, and the presence of sensitive subpopulations. These factors will be considered when evaluating the appropriateness of medical monitoring in a community. The CERCLA legislation also provides for a mechanism for referral for treatment of those who are screened positive for the selected health outcomes; therefore, a mechanism to refer people for diagnosis, interventions, or treatment should be in place prior to the initiation of a medical monitoring program.

The primary purpose of a medical monitoring program is not considered to be a research activity that further investigates the cause-effect relationship between exposure and outcome. The purpose of a medical monitoring program is case-finding in order to refer individuals for further evaluation and, as appropriate, treatment. Within this framework, medical monitoring includes both testing for early biological effect and an assessment of exposure using biological specimens (for example, blood or urine), when appropriate. This is provided as a service to individuals in communities where there is believed to be an increased risk of disease from exposure to hazardous substances released into the environment.

**Criteria for Considering Medical Monitoring**

The criteria outlined below will be used to determine the appropriateness of conducting medical monitoring in a community and will be applied in a phased approach. Phase I, conducted by ATSDR, consists of an evaluation of the exposure and outcome criteria. Phase II consists of an evaluation of the system criteria. Phase II will be conducted with the input of a panel consisting of community, State and local health officials, and ATSDR. At the end of Phase II, a detailed medical monitoring plan will be written at sites where a monitoring program is established. All of the criteria must be met at a site in order for a medical monitoring program to be established at that site. In addition, resources must be available to initiate and sustain the program.

**Phase I**

*Exposure Criteria*

A. There should be evidence of contaminant levels in environmental media that would suggest the high likelihood of environmental exposure to a hazardous substance and subsequent adverse health outcomes.

The National Research Council (NRC) defines exposure as ''an event that occurs when there is contact at a boundary between a human and the environment at a specific contaminant concentration for a specified period of time; the units to express exposure are concentration multiplied by time'' (NRC, 1991). The specific contaminant concentration and period of time will vary for different chemicals and different media. The exposure must be to a hazardous substance as defined under CERCLA, and the result of a release from a CERCLA-covered facility. A release from a CERCLA-covered facility includes those events that establish an open pathway of exposure (i.e., an unfenced area with high soil contamination could be considered a ''release'') or allows contaminants to go off-site via air, surface water, ground water, or other pathway. The primary criteria for medical monitoring should be documented evidence of exposure of a population to a hazardous substance in the environment. An exposure will be considered to be at a sufficient level if there is documentation of an increased opportunity for exposure to a level that meets or exceeds some health-based comparison value (such as Minimum Risk Levels (MRLs) or Reference Doses (RfDs)) or that meets or exceeds a level reported in the peer-reviewed literature to result in some adverse health effect. Documentation is considered sufficient if it is from an exposure assessment, environmental exposure modeling, or sampling from a general area (for example, water samples from an aquifer or a town water supply). Documentation of individual levels of exposure is not required. In cases in which exposures are unknown or undocumented, environmental monitoring is a more appropriate initial activity.

B. There should be a well-defined, identifiable target population of concern in which exposure to a hazardous substance at a sufficient level has occurred.

Initially, the target population of concern will be defined geographically on the basis of exposure. In addition, all populations considered will be assessed for the presence of any sub-population at increased risk of the adverse health effects associated with the exposures. An example of a subpopulation at increased risk would be preschool children in an area with known lead exposures. The size of the target population of concern is not a factor in the decision for monitoring. In areas where biological markers of exposure have not been collected, environmental sampling can be used to estimate exposure levels. The target population of concern is the population in which there is documented exposure at a sufficient level to place the individuals in that population at significant increased risk for developing some specific adverse health effect.

*Outcome Criteria*

A. There should be documented human health research that demonstrates a scientific basis for a reasonable association between an exposure to a hazardous substance and a specific adverse health effect (such as an illness or change in a biological marker of effect).

Previous studies on human populations must demonstrate a reasonable association between a particular exposure and an adverse health effect. In order to make that inference, consideration should be given to the strength, specificity, and consistency of the association among the identified studies. The period of exposure (including the timing and duration of the exposure) and its relationship to the latency period for the disease or illness should also be examined if information is available. Consideration should be given to whether the association has demonstrated a dose-response relationship and whether the association is consistent with the existing body of knowledge. This information could include a variety of occupational, epidemiological, or other studies involving human populations.

B. The monitoring should be directed at detecting adverse health effects that are consistent with the existing body of knowledge and amenable to prevention or intervention measures.

The monitoring should be established for specific adverse health effects. The specific adverse health effect being monitored should be a result of the possible exposure consistent with the existing body of knowledge. An adverse health effect is consistent with the existing body of knowledge if it has been described in the literature as caused by that agent or by similar agents, taking into account structure-activity relations.

In addition, the adverse health effects (disease process, illness, or biomarkers of effect) should be such that early detection and treatment or intervention

interrupts the progress to symptomatic disease, improves the prognosis of the disease, improves the quality of life of the individual, or is amenable to primary prevention. If the adverse health effects that are of concern in an individual or in a community are not easily detectable and not medically treatable, then medical monitoring would not be beneficial and would not be an appropriate public health activity. An easily detectable effect is one that can be found on clinical examination, or through the use of simple, diagnostic tests in an outpatient setting. Also, the test procedures must be acceptable to the patient and the community. The diagnostic tests must be nonexperimental, relatively noninvasive (such as the drawing of a tube of blood for laboratory tests), and simple to administer.

**Monitoring for Evidence of Continuing Exposure**

At sites with exposure in the community, the monitoring program might include biological markers of continuing exposure. For example, the Bunker Hill Superfund site has had lead screening of children for many years. Those sites would be ones in which the exposure is known to have a variety of adverse health effects, but for which no tests are available to detect those effects at a time when intervention could affect the course of the disease process. In those instances, the primary intervention is to remove the individual from the exposure. This allows the medical monitoring system to recommend referral for intervention prior to the onset of detectable adverse health effects. A monitoring system that includes biomarkers of continuing exposure is similar to medical surveillance of hazardous waste workers where changes indicative of increasing or continued exposures occur sufficiently early that the exposure can be curtailed and the risk for disease reduced (Gochfeld 1990).

**Phase II**

*General Information*

Phase II of the program is carried out by ATSDR with assistance from the community. When ATSDR has determined that exposure from a site has met the exposure and outcome criteria, a site panel will be formed based on recommendations from the community and the State and/or local health departments to review the system criteria and to assist in the development of a site-specific medical monitoring plan. The site panel will include representatives from ATSDR, the community, State or local health departments, local medical societies, and subject experts as necessary. The site panel will function in much the same manner as the Community Assistance Panels (CAPs) that are established at some sites during the public health assessment process. The site panel will follow the established procedures for those CAPs. The site panel will be responsible for assessing the available community health resources and determining the feasibility and extent of the screening program for the community. If the panel determines that a screening program is feasible in the community and ATSDR concurs with that decision, ATSDR will develop a site-specific monitoring plan. That plan will be presented to the site panel for review and concurrence. After the plan has been developed and has undergone peer review, it will be presented to the community at large for their input prior to establishing the program.

*System Criteria*

A. The general requirements for a medical screening program should be satisfied.

The monitoring aspect of a health surveillance program consists of the periodic medical testing to screen individuals who are at increased risk of disease. Monitoring serves to identify those individuals with an unrecognized adverse health effect. This is consistent with the definition of screening as ''the presumptive identification of unrecognized disease or defect by the application of tests, examinations, or other procedures which can be applied rapidly. Screening tests sort out apparently well persons who probably have a disease from those who probably do not. A screening test is not intended to be diagnostic. Persons with positive or suspicious findings must be referred to their physicians for diagnosis and necessary treatment.'' (Commission on Chronic Illness, 1957) In general, the ability to predict the presence or absence of disease from test results depends on the sensitivity and specificity of the test and the prevalence of the disease in the population being tested. The higher the prevalence, the more likely a positive test indicates disease (Mausner & Kramer, 1985). In order for a screening program to be of public health benefit, the population being screened should be at a significantly high risk for the undiagnosed disease (i.e., the disease should have a sufficiently high prevalence in the population).

Given that definition, there are certain requirements for screening programs that should be considered when evaluating a possible medical monitoring program for a site (adopted from Mausner & Kramer, 1985). Those requirements are:

★ The natural history of the disease process should be understood sufficiently for screening.

★ The early detection through screening should be known to have an impact on the natural history of that disease process. For example, the detection of breast cancer while it is localized has been shown to increase the ten-year survival rate. For that reason, several groups have made recommendations for the early detection of breast cancer in asymptomatic women. Those recommendations include breast self-examination, breast physical examination, and mammography (Mettlin & Dodd, 1991; Kelsey & Gammon, 1991).

★ There should be an accepted screening test that meets the requirements for validity, reliability, estimates of yield, sensitivity, specificity, and acceptable cost. The purpose of ATSDR-sponsored medical monitoring is not to develop new screening tests. The medical monitoring program will use tests that have been recommended and used for screening in other settings.

The U.S. Preventive Services Task Force has established criteria for determining the effectiveness of preventive strategies including screening tests. The criteria for effectiveness of a screening test include the efficacy of the screening test and the effectiveness of early detection. The Task Force used efficacy to mean accuracy and reliability. The accuracy is measured using four indices: sensitivity, specificity, positive predictive value, and negative predictive value (see table below for definitions). A test with poor sensitivity will result in a large proportion of persons with disease being told they are free of disease (false-negatives). A test with poor specificity will result in healthy persons being told they have the disease (false-positives). There may be serious consequences in the use of screening tests with poor sensitivity and/or specificity. Persons with false negative results may have delays in diagnosis and treatment. False positive results can result in follow-up testing that is uncomfortable, expensive and potentially harmful. The evaluation and selection of a screening test must include a determination of the likelihood of producing false positive results (the positive predictive value (PPV)). The PPV changes in accordance with the prevalence of the condition in the screened population. PPV is unlike

sensitivity and specificity in that it is not a constant characteristic of a screening test. If the condition is sufficiently rare in the screened population, even tests with excellent sensitivity and specificity can have low PPV, having more false positive results than true positive results.

Another important aspect in determining the efficacy of a screening test is the reliability of the test. The reliability (reproducibility) is the ability of the test to give the same result when it is repeated. An accurate test with poor reliability can produce results that vary widely from the correct value, even though the average of the results approximates the true value. Poor reliability may be due to either interobserver variation or intraobserver variation (U.S. Preventive Services Task Force, 1989).

DEFINITION OF TERMS

| Term | Definition | Formula* |
|---|---|---|
| Sensitivity | Proportion of persons with the condition who test positive. | $\frac{a}{a+c}$ |
| Specificity | Proportion of persons without the condition who test negative. | $\frac{d}{b+d}$ |
| Positive Predictive Value | Proportion of persons with positive test who have condition. | $\frac{a}{a+b}$ |
| Negative Predictive Value | Proportion of persons with negative test who do not have the condition. | $\frac{d}{c+d}$ |

| *Explanation of Symbols | Condition absent | Condition present |
|---|---|---|
| Positive Test | a | b |
| Negative Test | c | d |

Legend: a=true +; b=false +; c=false −; d=true −.

★ The screening program should be one that is feasible and acceptable to individuals and the community. Therefore, plans and possible screening tests for a medical monitoring program will be presented to the community for input prior to the initiation of any recommended program.

B. An accepted treatment, intervention, or both, for the condition (outcome or marker of exposure) must exist and a referral system should be in place prior to the initiation of a medical monitoring program.

There should be established criteria for determining who should receive referral for intervention or treatment. These criteria will be based on the selected effect being screened for and the screening test being used. Results will be evaluated by ATSDR longitudinally and cross-sectionally to identify changes in the system or screening tools that require follow-up (Gochfeld 1990). A referral mechanism should exist so that those who are eligible for the intervention can be referred to a qualified health care provider for further diagnosis, treatment, or intervention. The referral must be for treatment or intervention that is standard practice and not experimental in nature. The medical monitoring (screening) program is not responsible for the cost of the referral, the intervention, or the treatment of individuals participating in the program.

C. The logistics of the system must be resolved before the program can be initiated.

After medical monitoring has been determined to be appropriate for a site, the specifics of the monitoring system will be detailed in a site-specific medical monitoring plan. The site panel consisting of the community members, appropriate health officials, and subject experts as necessary will work with ATSDR to develop and review the site-specific medical monitoring plan. The specifics of the medical monitoring system recommended can vary for each site. The monitoring plan is the protocol for the specific program to be proposed in a community. The plan will outline the target community, the types of outcomes to be screened for, the participants in the referral system, and the program reports. The plan will include a review of the latency period for the outcomes being monitored and the duration of the exposure to define the period of time that the program will operate in a specific site population. The target population; the completeness with which the exposed population can be identified, contacted, and followed; the screening tests; and the selected health outcomes will all influence the specifics of the system. Existing medical facilities and personnel will be used when possible.

The monitoring plan will be submitted for peer review prior to its implementation at a site. The plan for a site might require additional review by an expert panel (ethicists, NRC) to evaluate the screening tests recommended. ATSDR's Division of Health Studies will work closely with the Division of Health Education to provide professional health education when needed to enhance the medical monitoring program.

Medical monitoring is one of ATSDR's service activities and is not considered to be a research tool. The monitoring activity at each site will be routinely evaluated for the effectiveness of the screening tests in place and the types of effects being detected. Due to confidentiality issues in dealing with small groups of people, the reporting from the system will consist of annual reports noting the number of individuals screened, the number of referrals made, and the number of conditions diagnosed in the referral system. ATSDR will develop a list that includes information on the types of exposures seen in the communities and the types of screening tests that were included in the monitoring. ATSDR can provide this information as available to the site panels to assist them in deciding on the types of screening tools based on what has been used in other areas.

The referral system will consist of the review of the screening results and the referral to appropriate health care providers or referral physicians. The specific mechanisms for determining who needs referral and for selecting the health care providers in the referral pool must be in place prior to the initiation of the medical monitoring. Once the participant has been referred to the

referral providers, those providers will be responsible for any subsequent diagnosis, treatment, or intervention.

**Summary of Medical Monitoring**

Medical monitoring will be considered along with the other health follow-up activities to be recommended for populations around specific sites. The Division of Health Studies will make a determination on whether a site meets the exposure and outcome criteria for medical monitoring. If a site meets the previously discussed criteria and is selected for further consideration of a medical monitoring program, ATSDR will work with the community and other appropriate entities in designing the specific monitoring and referral system for that site's target population. ATSDR will notify, and where appropriate, work with the state health department to establish the program. The Division of Health Studies will monitor the program and be responsible for the oversight on the annual reports.

**References**

Commission on Chronic Illness. Chronic Illness in the United States, Vol. 1. Commonwealth Fund, Harvard University Press, Cambridge, 1957, page 45.

Gochfeld M. Medical surveillance of hazardous waste workers. In Principles and Problems in Occupational Medicine State of the Art Reviews: Hazardous Waste Workers. Gochfeld M and EA Favata, editors. Philadelphia: Hanley & Belfus, Inc., 1990; 5(1):1–8.

Kelsey JL and MD Gammon. The epidemiology of breast cancer. CA–A Cancer Journal for Clinicians 1991; 41(3):146–165.

Mausner JS and S Kramer. Epidemiology—an introductory text. Philadelphia: W.B. Saunders, 1985, pages 220–230.

Mettlin C and GD Dodd. The American Cancer Society guidelines for the cancer-related checkup: An update. CA–A Cancer Journal for Clinicians 1991; 41(5):279–282.

NRC (National Research Council). Human Exposure Assessment for Airborne Pollutants: Advances and Opportunities. Washington, D.C.: National Academy Press, 1991, pages 17–37.

U.S. Preventive Services Task Force. Guide to Clinical Preventive Services: An Assessment of the Effectiveness of 169 Interventions. Baltimore: Williams & Wilkins, 1989, pages xxix–xxxvii.

Dated: July 24, 1995.

**Claire V. Broome,**

*Deputy Administrator, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 95–18578 Filed 7–27–95; 8:45 am]

BILLING CODE 4163–70–P

## Centers for Disease Control and Prevention

**[Announcement 562]**

## Analytic Studies to Elaborate the Impact of Race, Ethnicity, and Socioeconomic Status Upon the Health of Minority Populations

**Introduction**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for cooperative agreements to conduct analytic studies to elaborate the impact of race, ethnicity, and socioeconomic status (SES) upon the health of minority populations in the United States. Research sponsored by this announcement will focus on the performance of special studies and analyses of existing data to:

1. Identify the critical features of SES which determine health, delineate the mechanisms and processes whereby social stratification produces disease, and specify the psychological and interpersonal processes that can intensify or mitigate the effects of social structure on health behaviors, access to care, and health outcomes;

2. Explore the need for more accurate descriptions of racial and ethnic status to monitor the differential impact of health policy changes and system reform on minority subpopulations; and,

3. Increase understanding of the impact of ethnicity on health by identifying the ways in which SES, cultural factors, and racial/ethnic variables and discrimination impact on health behaviors, access to health care, and health outcomes.

The ''Disadvantaged Minority Health Improvement Act of 1990'' (Pub.L. 101–527) which established the Minority Health Statistics Grants Program and subsequent reauthorizing legislation contained in the ''Preventive Health Amendments of 1993'' (Pub.L. 103–183), recognized the need for improved and refined data to monitor and focus on the differences in health status between and among minority populations.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Surveillance and Data Systems. (For ordering a copy of ''Healthy People 2000,'' see the section ''Where to Obtain Additional Information.'')

**Authority**

This program is authorized under section 306(m) of the Public Health Service Act [42 U.S.C. 242k(m)] as amended.

**Smoke-Free Workplace**

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

**Eligible Applicants**

Applications may be submitted by nonprofit organizations and institutions, and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, are eligible to apply.

**Availability of Funds**

Approximately $500,000 will be available in FY 1995 to fund approximately 3 to 7 awards ranging from $50,000 to $200,000. It is expected that the average award will be $150,000. It is expected that the awards will begin on or about September 30, 1995, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Applications requesting funds greater than an upper limit of $250,000 total costs for any 12-month budget period will be returned to the applicant without review. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

**Purpose**

The purpose of this program announcement is to support special studies and analyses that will elucidate the impact of race/ethnicity and SES upon the health of minority populations in the United States.

Research priorities for race/ethnicity and SES have been divided into several categories. Genetics is an important variable; however, it diverts attention from the more influential social and environmental differences which have erroneously been attributed as race differences. Implicit in these priorities are a number of methodological and analytical issues, such as finding and

sampling small groups as well as developing new statistical techniques to analyze new and existing data, which need to be addressed in order to investigate these issues:

*Special Studies*

- Special studies of minority population to examine changes in behavior, wealth, generational (e.g., immigration); historical (e.g., political, social); population migration (within the United States/in and out of the United States); family structure, and lengthening life span.
- Focused studies on rare populations to address a need for a national origin and generational research, and supplemental race and ethnic descriptors in addition to other identifiers (e.g., the concept of underserved populations can help to eliminate racial lumping).
- Critical synthesis of past theoretical and empirical research on race and ethnicity and SES.
- Studies of the impact of migration, acculturation, and other processes on the health status of minority groups and subgroups.
- Studies of the appropriateness, reliability, and validity of health measures for particular ethnic groups, taking into consideration values, beliefs, and externally-imposed factors that need to be addressed.
- Identify and define the intervening mechanisms that link SES with health service utilization and health status.
- Identify and use additional measures of SES on race and ethnicity classification—including measures of family structure and living arrangements, new measures of economic status (e.g., wealth, per capita income), acculturation, residence, labor force participation (including females), religion/spirituality, alienation, SES in early life.
- Conduct comprehensive studies of stress in family, residential, and occupational environments including financial strain and exposure to discrimination.
- Studies of populations currently in transition.
- Study the use of alternative health resources which supplant traditional resources.
- Conduct research designed to understand and improve self- reporting of race and ethnicity, including:

—how minority populations self-identify and report (cognitive process, etc.),
—effects of mixed parentage, and
—effects of self-identification or self-reporting of persons of biracial or multiracial background.

- Test the reliability of race and ethnic information on vital and medical records (self-reports vs. proxy reports with a focus on mortality statistics and underreporting).
- Conduct research on capturing racial and ethnic information via provider records.
- Conduct special studies and/or analyses to understand the health of racial and ethnic populations where there are known data gaps including:

—the effect of age, gender, generation, education, birthplace, on health status;
—social, economic, environmental (social and physical) and psychological factors affecting health status;
—mental health and stress;
—sources of medical care, prevention care, and payment mechanisms;
—cultural factors affecting health status (e.g., acculturation, assimilation, etc.); and
—alternative health care vs. health status outcome.

- Conduct research to develop additional or enhanced predictors of health status that can explain observed differences between race and ethnic populations, including SES status measures such as:

—generational status
—measures of family structure and living arrangements
—wealth
—per capita income
—labor force participation (including women)
—SES in early life
—income to needs comparisons
—other variables such as: cultural, environmental, and societal.

- Develop and test analytical approaches to better understand the relationship between race, ethnicity, and SES as they pertain to or affect health outcomes.
- Studies to examine the relationship between self actualization, self-esteem, social support and health status or perceived health status among racial/ethnic groups.
- Studies to address environmental equity issues, including psycho/social environments.

**Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities).

*A. Recipient Activities*

Where applicable recipients will involve community-based organizations, members of the minority population under study, and researchers from universities or private nonprofit organizations throughout the research process. Involvement in these activities may include research design, implementation, analysis, and dissemination of research results. The applicant must address why the involvement of any of the above-referenced groups is not relevant to the proposed project.

In addition, all recipients are expected to determine whether their proposed projects meet the criteria of the Protection of Human Subjects (45 CFR Part 46) requiring review by an institutional review board (IRB). If an IRB review is required and the applicant does not have the capacity to perform an IRB review, the applicant is strongly encouraged to enter into a partnership with universities or other organizations with the capacity to conduct an IRB review.

Each recipient will address the activities in one or both of the following areas, as appropriate:

1. Special studies or analyses

a. Identify a problem or population where there is a unique opportunity to conduct analytic studies or there are gaps in existing information as identified through the research literature, ''Healthy People 2000,'' and/or references cited in the ''Where to Obtain Additional Information'' section.

b. Identify and define available sources of information and assistance for performing special studies or analyses (e.g., NCHS and other Federal organizations, State/local health departments, universities, survey research organizations, existing Centers of Excellence, community-based organizations, etc.).

c. Develop the research design, implementation and analytic plans for the conduct of special studies or analysis. Applicants should consider the professional acceptability of their methodologic approach (peer review journals/statistical standards, etc.), specific expectations of methods used, comparability to national data sources, and generalizability to other groups or subgroups.

d. Execute the planned study.

e. Disseminate research findings in publications, reports, etc., and within the respective community.

*B. CDC Activities*

1. Assist in the refinement of analytic and research plans.

2. Make available other information and technical assistance from government sources, as appropriate.

3. Provide liaison with other government agencies, as appropriate.

4. Provide technical assistance on individual analytic and research projects, including those conducted by sub-grantees, as appropriate.

**Evaluation Criteria**

Applications will undergo an initial peer review evaluation according to the following criteria:

1. The likelihood that new knowledge gained will subsequently contribute to improvement of the ability of the scientific community to identify and meet the data needs of the future. Factors to be considered include: uniqueness of the project objectives and their consistency with program priorities; and the generalizability of the project findings. (25 points)

2. Understanding the technical and substantive issues and the research priorities the project proposes to address; clarity, feasibility, and practicality of the goals and objectives of the project as well as the plan to meet them. (20 points)

3. Soundness, practicality, and feasibility of the technical approach to the work, including how the tasks are to be carried out, anticipated problems and proposed solutions; conformance with accepted scientific standards, principles and techniques; and the feasibility and appropriateness of the proposed evaluation plan and mechanism. (20 points)

4. Substantial involvement of community-based organizations and indigenous populations in the research project; links to existing research networks and infrastructures at the local, State and/or national level. (20 points)

5. Capabilities of the proposed investigators, including qualifications, relevant experience in the content and execution of the proposed project, and adequacy of project management to keep project on track and on schedule. (15 points)

A second-level program review will be conducted by senior Federal staff on applications referred from the initial review. All referred applications will be evaluated on an individual basis according to the criteria below:

1. The results of the objective review.

2. Balance in addressing the various racial and ethnic groups and geographic areas.

3. Non-duplication of currently-supported research activities.

4. Generalizability and comparability of research results.

5. Match with available technical assistance.

6. Impact on program budget.

Awards will be made based on merit and priority score ranking by the peer review, program review by senior Federal staff, and the availability of funds.

**Executive Order 12372 Review**

This program is not subject to the Executive Order 12372 review.

**Public Health System Reporting Requirements**

This program is not subject to the Public Health System Reporting Requirements.

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance Number is 93.283.

**Other Requirements**

*Paperwork Reduction Act*

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

*Human Subjects*

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services' Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. In addition to other applicable committees, Indian Health Services (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

*Letters of Intent*

Although it is not a prerequisite to apply, potential applicants are encouraged to submit a non-binding letter of intent to the Grants Management Officer (whose address is given in the section titled ''Application Submission and Deadline''). It should be postmarked on or before August 15, 1995. The letter should include a brief summary of the research proposal and the names and addresses of the principal investigators. This letter does not influence review or funding decisions. Rather, it enables CDC to effectively plan for the review.

**Application Submission and Deadline**

The original and five copies of the application PHS form 398 (OMB Number 0925–0001) or PHS form 5161–1 (OMB Number 0937–0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–16, Atlanta, Georgia 30305, on or before August 31, 1995. (Note: local governments may use PHS form 5161–1; however, PHS form 398 is preferred. If using PHS form 5161–1, submit an original and two copies to the address stated above.)

1. *Deadline:* Applications shall be considered as meeting the deadline if they are:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group.

(Applicants must request a legibly dated U.S. Postal Service postmark or 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 in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Where to Obtain Additional Information**

A complete program description, information on application procedures, an application package and business management assistance may be obtained from: David Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, telephone (404)842–6521.

Programmatic technical assistance may be obtained from Audrey L. Burwell, Grants Coordinator, National Center for Health Statistics, Room 1100, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301)436–

7062 (E-mail address: AZB2@NCH11a.em.cdc.gov).

Please refer to Announcement Number 562 when requesting information and submitting an application.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report; Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report; Stock No. 017–001–00473–1) referenced in the ''Introduction'' through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202)512–1800.

Information regarding the ''Directory of Minority Health Data Resources of the Public Health Service'' may be obtained from an information specialist at the Office of Minority Health Resource Center, P.O. Box 3733, Washington, DC 20013–7337, telephone 1–800- 444–6472.

Information regarding the ''1992 NCVHS Annual Report and the Minority Health Statistics Grants Program Factsheet'', ''Setting a Research Agenda: Challenges for the Minority Health Statistics Grants Program'', and ''Race and Ethnic standards for Federal Statistics and Administrative Reporting'' may be obtained from Sara Lewis, Program Analyst, National Center for Health Statistics, Room 1100, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301)436–7062 (E-mail address: SRD1@NCH11a.em.cdc.gov).

Dated: July 24, 1995.

**Joseph R. Carter,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 95–18579 Filed 7–27–95; 8:45 am]

**BILLING CODE 4163–18–P**

## National Institutes of Health

### Meeting of the National Advisory Council for Human Genome Research

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council for Human Genome Research, National Center for Human Genome Research, September 11 and 12, 1995, Embassy Suites Chevy Chase Pavilion, Chevy Chase I and II, 4300 Military Road NW., Washington, DC.

This meeting will be open to the public on Monday, September 11, from 8:30 a.m. to 11:30 a.m. to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 11 at 11:30 a.m. to recess and on September 12 from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Elke Jordan, Deputy Director, National Center for Human Genome Research, National Institutes of Health, Building 38A, Room 605, Bethesda, Maryland 20892, (301) 496–0844, will furnish the meeting agenda rosters of Committee members and consultants, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Jane Ades, (301) 402–2205, two weeks in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Dated: July 24, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95–18529 Filed 7–27–95; 8:45 am]

**BILLING CODE 4140–01–M**

### National Center for Research Resources; Notice of Meeting of the National Advisory Research Resources Council and Its Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), National Center for Research Resources (NCRR), at the National Institutes of Health. This meeting will be open to the public as indicated below, to discuss program planning; program accomplishments; administrative matters such as previous meeting minutes; the report of the Director, NCRR; review of budget and legislative updates; and special reports or other issues relating to committee business. Attendance by the public will be limited to space available.

This meeting will be closed to the public as indicated below in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Public Affairs Officer, NCRR, National Institutes of Health, 1 Rockledge Center, Room 5146, 6705 Rockledge Drive, MSC 7965, Bethesda, Maryland 20892–7965, (301) 435–0888, will provide a summary of meeting and a roster of the members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

*Name of Committee:* The Subcommittee on Planning of the National Advisory Research Resources Council.

*Executive Secretary:* Louise Ramm, Ph.D., Deputy Director, National Center for Research Resources, Building 12A, Room 4011, Bethesda, MD 20892, Telephone: (301) 496–6023.

*Place of Meeting:* National Institutes of Health, 9000 Rockville Pike, Conference Room 3B41, Building 31B, Bethesda, Maryland 20892.

*Open:* September 7, 7:30 a.m.–8:45 a.m.

*Name of Committee:* National Advisory Research Resources Council.

*Place of Meeting:* National Institutes of Health, 9000 Rockville Pike, Conference Room 10, Building 31C, Bethesda, Maryland 20892.

*Open:* September 7, 9 a.m. until recess.

*Closed:* September 8, 8 a.m. until 9:30 a.m.

*Open:* September 8, 9:30 a.m. until adjournment.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.337, Biomedical Research Support; 93.371, Biomedical Research Technology; 93.389, Research Centers in Minority Institutions; 93.198, Biological Models and Materials Research; 93.167, Research Facilities Improvement Program; 93.214 Extramural Research Facilities Construction Projects, National Institutes of Health.)

Dated: July 24, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95–18534 Filed 7–27–95; 8:45 am]

**BILLING CODE 4140–01–M**

## National Institute of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on September 18–19, 1995, Building 31, Conference Room 10, Bethesda, Maryland.

This meeting will be open to the public from 11 a.m. to 6 p.m. on September 18, and from 8:30 a.m. to 10:30 a.m. on September 19, for the discussion of program policies and issues, opening remarks, report of the Acting Director, NIGMS, and other business of Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 18 from 8:30 a.m. to 11 a.m., and on September 19, from 10:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AS–43H, Bethesda, Maryland 20892, telephone: 301–496–7301, FAX 301–402–0224, will provide a summary of the meeting, and a roster of Council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Dieffenbach in advance of the meeting. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Natcher Building, Room 2AN–32C, Bethesda, Maryland 20892, telephone: 301–594–4499 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS]; Special Programs, 93.960.

Dated: July 24, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95–18530 Filed 7–27–95; 8:45 am]

BILLING CODE 4140–01–M

## Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, September 14–15, 1995, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892.

The Council meeting will be open to the public on September 14 from 8:30 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., sec. 10(d) of Pub. L. 92–463, the Council meeting will be closed to the public from approximately 3:30 p.m. to recess on September 14 and from 8:30 a.m. to adjournment on September 15 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meetings and a roster of the Council members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Rockledge Building (RKL2), Room 7100, National Institutes of Health, Bethesda, Maryland 20892, (301) 435–0260, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: July 24, 1995.

**Susan K. Feldman,**

*Committee Management Officer, National Institutes of Health.*

[FR Doc. 95–18532 Filed 7–27–95; 8:45 am]

BILLING CODE 4140–01–M

## National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

*Name of SEP:* Collaborative Research Program in Bronchopulmonary Dysplasis (BPD).

*Date:* August 14–15, 1995.

*Time:* 7:00 p.m.

*Place:* Holiday Inn, Bethesda, Maryland.

*Contact Person:* Anthony M. Coelho, Jr., Ph.D., Rockledge II, Room 7182, 6701 Rockledge Drive, Bethesda, Maryland 20892, (301) 435–0277.

*Propose/Agenda:* To review and evaluate grant applications

*Name of SEP:* Insulin in Resistance Atherosclerosis Study (IRAS) (Telephone Conference Call).

*Date:* August 16, 1995.

*Time:* 10:00 a.m.

*Place:* Rockledge II, Room 7178, 6701 Rockledge Drive, Bethesda, Maryland.

*Contact Person:* David M. Monsees, Ph.D., Rockledge II, Room 7178, 6701 Rockledge Drive, Bethesda, Maryland 20892, (301) 435–0270.

*Purpose/Agenda:* To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: July 24, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95–18536 Filed 7–27–95; 8:45 am]

BILLING CODE 4140–01–M

## National Institute on Deafness and Other Communication Disorders; Notice of Meetings of the Deafness and Other Communication Disorders Programs Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the Deafness and Other Communication Disorders Programs Advisory Committee. The meetings are open to the public and will take place as telephone conference calls originating in Room 400C, 6120 Executive Blvd., Rockville MD 20852.

*Date:* September 5, 1995.
*Time:* 12 pm to 2 pm.
*Purpose/Agenda:* To discuss future scientific initiatives in the areas of voice, speech, and language.

*Date:* September 6, 1995.
*Time:* 12 pm to 2 pm.
*Purpose/Agenda:* To discuss future scientific initiatives in the areas of hearing, balance, and vestibular.

*Date:* September 8, 1995.
*Time:* 12 pm to 2 pm.
*Purpose/Agenda:* To discuss future scientific initiatives in the areas of smell and taste.

*Contact Person:* Ralph F. Naunton, M.D., Director, Division of Human Communication, NIDCD/NIH, 6120 Executive Blvd. MSC 7180, Bethesda MD 20892, (301) 496–1804.

Summaries of the meetings and rosters of the members may be obtained from Dr. Naunton's office. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Naunton prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: July 24, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95–18535 Filed 7–27–95; 8:45 am]

BILLING CODE 4140–01–M

## Meeting of National Advisory Environmental Health Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, September 14–15, 1995, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

This meeting will be open to the public on September 14 from 9 a.m. to approximately 3:30 p.m. for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 14 from approximately 3:30 p.m. to recess and from 9 a.m. to adjournment on September 15, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Kim Whitcher, Council Secretary, NIEHS, PO Box 12233, Research Triangle Park, N.C., 27709 (919–541–7723), will provide summaries of the meeting and rosters of council members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Whitcher in advance of the meeting.

Dr. Anne Sassaman, Director and Executive Secretary, Division of Extramural Research and Training, NIEHS, PO Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: July 24, 1995.

**Susan K. Feldman,**

*Committee Management Officer, National Institutes of Health.*

[FR Doc. 95–18533 Filed 7–27–95; 8:45 am]

BILLING CODE 4140–01–M

## National Institute of Neurological Disorders and Stroke; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the National Institute of Neurological Disorders and Stroke (NINDS).

The National Advisory Neurological Disorders and Stroke Council and its subcommittee meetings will be open to the public as indicated below. Attendance by the public will be limited to space available.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary or the Scientific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed for the meeting.

*Name of Committee:* The Planning Subcommittee of the National Advisory Neurological Disorders and Stroke Council.
*Date:* September 20, 1995.
*Place:* National Institutes of Health, Building 31, Conference Room 8A28, 9000 Rockville Pike, Bethesda, MD 20892.
*Closed:* 1:30 p.m.–recess.

*Name of Committee:* National Advisory Neurological Disorders and Stroke Council.
*Dates:* September 21–22, 1995.
*Place:* National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.
*Open:* September 21, 9 a.m.–approximately 3 p.m.
*Agenda:* A report by the Director, NINDS; a report by the Director, Division of Extramural Activities, NINDS; and a presentation by a NINDS grantee.
*Closed:* September 21, approximately 3 p.m.–recess; September 22, 8:30 a.m.–adjournment.
*Executive Secretary:* Constance W. Atwell, Ph.D., Director, Division of Extramural Activities, NINDS, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9248.

The following meetings will be totally closed to review and evaluate grant applications.

*Name of Committee:* Neurological Disorders Program Project Review B Committee.
*Date:* October 11–13, 1995.

*Time:* October 11, 7:30 p.m.–recess; October 12, 8 a.m.–recess; October 13, 8 a.m.–adjournment.

*Place:* Hampshire Hotel, 1310 New Hampshire Avenue, N.W., Washington, DC 20036.

*Contact Person:* Dr. Paul Sheehy, Scientific Review Administrator, National Institutes of Health, Federal Building, Room 9C–10, Bethesda, MD 20892, (301) 496–9223.

*Name of Committee:* Neurological Disorders Program Project Review A Committee.

*Date:* October 25–27, 1995.

*Time:* October 25, 7:30 p.m.–recess; October 26, 8:30 a.m.–recess; October 27, 8:30 a.m.–adjournment.

*Place:* Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Dr. Katherine Woodbury, Scientific Review Administrator, National Institutes of Health, Federal Building, Room 9C–14, Bethesda, MD 20892, (301) 496–9223.

*Name of Committee:* Training Grant and Career Development Review Committee.

*Date:* November 8–10, 1995.

*Time:* November 8, 9 a.m.–recess; November 9, 8:30 a.m.–recess; November 10, 8:30 a.m.–adjournment.

*Place:* Hyatt Islandia, San Diego's Mission Bay, 1441 Quivira Road, San Diego, CA 92109–7898.

*Contact Person:* Dr. Alfred Gordon, Scientific Review Administrator, National Institutes of Health, Federal Building, Room 9C–14, Bethesda, MD 20892, (301) 496–9223.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: July 24, 1995.

**Susan K. Feldman,**

*Committee Management Officer, National Institutes of Health.*

[FR Doc. 95–18531 Filed 7–27–95; 8:45 am]

**BILLING CODE 4140–01–M**

## Division of Research Grants; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

*Purpose/Agenda:* To review individual grant applications.

*Name of SEP:* Microbiological and Immunological Sciences.

*Date:* August 8, 1995.

*Time:* 4:00 p.m.

*Place:* NIH, Rockledge II, Room 4208, Telephone Conference.

*Contact Person:* Dr. Anita Weinblatt, Scientific Review Administrator, 6701 Rockledge Drive, Room 4208, Bethesda, MD 20892, (301) 435–1224.

*Name of SEP:* Chemistry and Related Sciences.

*Date:* August 10, 1995.

*Time:* 2:30 p.m.

*Place:* NIH, Rockledge II, Room 4150, Telephone Conference.

*Contact Person:* Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, MD 20892, (301) 435–1719.

*Name of SEP:* Microbiological and Immunological Sciences.

*Date:* August 14, 1995.

*Time:* 1:00 p.m.

*Place:* NIH, Rockledge II, Room 4200, Telephone Conference.

*Contact Person:* Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 4200, Bethesda, MD 20892, (301) 435–1219.

*Name of SEP:* Chemistry and Related Sciences.

*Date:* August 15, 1995.

*Time:* 10:00 a.m.

*Place:* NIH, Rockledge II, Room 4150, Telephone Conference.

*Contact Person:* Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, MD 20892, (301) 435–1719.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets of commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 24, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95–18537 Filed 7–27–95; 8:45 am]

**BILLING CODE 4140–01–M**

## Prospective Grant of Exclusive License: Mouse Monoclonal Antibodies Specific for Normal Primate Tissue, Malignant Human Cultured Cell Lines and Human Tumors

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in U.S. Patent 5,242,813, U.S. Patent Applications 08/051,133 and 08/363,203 and corresponding foreign patent applications entitled ''Mouse Monoclonal Antibodies Specific For Normal Primate Tissue, Malignant Human Cultured Cell Lines and Human Tumors'' to Pharmacia, S.P.A. of Milano, Itlay. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention includes three murine monoclonal antibodies (MAb), B1, B3 and B5. These antibodies react strongly with the Lewis Y blood group antigen on many human solid tumors but weakly with normal human tissues. MAb B3 reacts strongly with 10% of transitional cell carcinomas of the bladder, 75% of adenocarcinomas of the colon, 70% of adenocarcinomas of the lung, 65% with adenocarcinomas of the prostrate, 40% of squamous cell carcinomas of the lung and 25% of large cell carcinomas. MAb B3 reacts heterogeneously with 70% of breast carcinomas. Several important characteristics of this antibody make it an ideal candidate for further development: (1) Its strong and uniform reactivity with many human solid carcinomas; (2) its limited reactivity with normal tissues; (3) its expression on both human and monkey tissues will allow for predictive preclinical toxicology studies in monkeys. Additionally, these antibodies, when incorporated as the targeting element of an immunotoxin, have been shown to allow efficient entry of toxin agents into cells. These antibodies should be useful in the diagnosis and treatment of some forms of cancer.

**ADDRESSES:** Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Raphe Kantor, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804. Telephone: (301)

496–7735 ext. 247; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications. Applications for a license in the any field of use filed in response to this notice will be treated as objections to the grant to the contemplated licenses. Only written comments and/or applications for a license which are received by NIH on or before September 26, 1995 will be considered. Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 17, 1995.

**Barbara M. McGarey,**

*Deputy Director, Office of Technology Transfer.*

[FR Doc. 95–18528 Filed 7–27–95; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

**[Docket No. FR–3778–N–47]**

### 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 subusequently 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. 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; (This is not a toll-free number).

Dated: July 21, 1995.

**Jacquie M. Lawing,**

*Deputy Assistant Secretary for Economic Development.*

**Title V, Federal Surplus Property Program Federal Register Report for 07/28/95**

*Unsuitable Properties*—Building (by State)

Washington

Bldg. 101
Pacific Northwest Fleet Recreation and Education Support Center
Pacific Beach, WA
Landholding Agency: Navy
Property Number: 779530001
Status: Excess
Reason: Extensive deterioration.

Bldg. 129
Pacific Northwest Fleet Recreation and Education Support Center
Pacific Beach, WA
Landholding Agency: Navy
Property Number: 779530002
Status: Excess
Reason: Extensive deterioration.

Bldg. 131
Pacific Northwest Fleet Recreation and Education Support Center
Pacific Beach, WA
Landholding Agency: Navy
Property Number: 779530003
Status: Excess
Reason: Extensive deterioration.

Bldg. 136
Pacific Northwest Fleet Recreation and Education Support Center
Pacific Beach, WA
Landholding Agency: Navy
Property Number: 779530004
Status: Excess
Reason: Extensive deterioration.

[FR Doc. 95–18412 Filed 7–27–95; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ-933–05–5410–00–A130 & A124; AZA 29195 & AZA 29074]**

### Arizona, Conveyance of Federally-Owned Mineral Interests

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice.

**SUMMARY:** Pursuant to section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719), the following applications to purchase Federally-owned mineral interests have been received:

**(1) Douglas Land Company, L.L.C. (AZA 29195)**

*Gila and Salt River Meridian, Arizona*

T. 3 N., R. 5 W.,
Sec. 3, lots 3–4, S½NW¼, SW¼ EXCEPT CAP;
Sec. 4, lots 3–4, S½NW¼, SW¼;
Sec. 5, lots 1–2, S½NE¼;
Sec. 8, W½, SE¼ EXCEPT CAP;
Sec. 9, NW¼, S½ EXCEPT CAP;
Sec. 10, W½ EXCEPT CAP;
Sec. 15, W½;
Sec. 23, NW¼.

T. 3 N., R. 6 W.,
Sec. 3, lots 1–2, S½NE¼, SE¼ (locatables only);
Sec. 11, E½ (locatables only).

T. 4 N., R. 5 W.,
Sec. 3, SW¼;
Sec. 5, S½;
Sec. 8, W½;
Sec. 9, all;
Sec. 10, W½, SE¼;
Sec. 11, SE¼;
Sec. 12, W½;
Sec. 13, W½;
Sec. 14, NE¼, S½;
Sec. 15, N½, SW¼;
Sec. 17, E½;
Sec. 22, E½;
Sec. 23, N½, SW¼;
Sec. 34, W½.

T. 6 N., R. 4 W.,
Sec. 33, NE½, except West 1100 ft. thereof.

Containing 8,243 acres, more or less.

**(2) W.J. and Betty Lo Wells (AZA 29074)**

*Gila and Salt River Meridian, Arizona*

T. 16 N., R. 1 E.,
Sec. 7, lots 4–14, N½NE¼, SE¼NE¼, E½SE¼.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated from the mining and the mineral leasing laws. The segregation shall terminate upon issuance of a patent, upon final rejection of the application, or 2 years from the publication date, whichever occurs first.

**FOR FURTHER INFORMATION CONTACT:** Evelyn Stob, Land Law Examiner, Arizona State Office, PO Box 16563, Phoenix, AZ 85011–6563, (602) 650–0518.

Dated: July 20, 1995.

**Mary Jo Yoas,**

*Chief, Lands and Minerals, Operations Section.*

[FR Doc. 95–18507 Filed 7–27–95; 8:45 am]

**BILLING CODE 4310–32–P**

**[MT–930–1430–01; MTM 82330]**

### Proposed Withdrawal; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposes to withdraw 19,764.74 acres of public lands in aid of legislation and for protection of the unique resources within the Sweet Grass Hills Area of Critical Environmental Concern and other adjoining land areas. This notice segregates the land for up to 2 years from location and entry under the mining laws. The lands will remain open to mineral leasing.

**FOR FURTHER INFORMATION CONTACT:** James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

**SUPPLEMENTARY INFORMATION:** In aid of legislation, I have approved a petition allowing the Bureau of Land Management to file an application to withdraw for a period of 2 years the following described public lands from location and entry under the mining laws, but not from the public land laws or mineral leasing laws, subject to valid existing rights:

**Principal Meridian**

T. 37 N., R. 1 E.,
Sec. 1, lots 5 to 8, inclusive;
Sec. 2, lots 5 and 6, and S½ SE¼;
Sec. 11, E½E½;
Sec. 12, lots 1 to 8, inclusive, and S½N½;
Sec. 13, lots 1 to 5, inclusive, W½NE¼, NW¼, N½SW¼, SE¼SW¼, and W½SE¼;
Sec. 14, lots 1 to 3, inclusive, N½, SW¼, and N½SE¼;
Sec. 15, E½E½;
Sec. 22, E½NE¼;
Sec. 23, lot 1, E½NE¼, SW¼NE¼, NW¼, S½SW¼, and SE¼;
Sec. 24, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 25, lots 1 to 10, inclusive, SW¼NE¼, S½NW¼, N½SW¼, NW¼SE¼;
Sec. 26, E½NE¼, N½NW¼, and S½;
Sec. 27, NE¼NE¼, S½NW¼, NE¼SW¼, and NW¼SE¼;
Sec. 34, NE¼NE¼;
Sec. 35, NE¼, E½NW¼, and SW¼NW¼.

T. 36 N., R. 2 E.,
Sec. 5, lot 4;
Sec. 6, lots 1 and 2, and SW¼NE¼;
Sec. 23, E½NE¼ and N½SE¼;
Sec. 24, SW¼NW¼ and W½SW¼;
Sec. 25, SE¼NE¼ and E½SE¼.

T. 37 N., R. 2 E.,
Sec. 5, lot 8;
Sec. 6, lots 6, 7, 8, 9, and 10;
Sec. 7, lots 1 to 4, inclusive, and E½SW¼;
Sec. 17, W½SW¼;
Sec. 18, SW¼NE¼, E½SE¼, and NW¼SE¼;
Sec. 19, lots 2, 3, and 4, NE¼NE¼, SE¼NW¼, and NE¼SW¼;
Sec. 20 NW¼NE¼ and N½NW¼;
Sec. 30, lots 1 to 4, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 31, lots 1, 2, and 3, NE¼, E½NW¼, NE¼SW¼, and N½SE¼.

T. 35 N., R. 3 E.,
Sec. 3, lot 4 and SW¼NW¼;
Sec. 4, lots 1 and 2, S½NE¼.

T. 36 N., R. 3 E.,
Sec. 7, lot 2, SW¼NE¼, SE¼NW¼, E½SW¼, and NW¼SE¼;
Sec. 9, NE¼SW¼ and SE¼SE¼;
Sec. 10, S½SW¼ and SW¼SE¼;
Sec. 11, NW¼SW¼;
Sec. 15, NW¼, W½SW¼, and SE¼SW¼;
Sec. 17, lots 1 and 2, E½SW¼, and SE¼;
Sec. 18, lots 5, 6, 11, and 12, and NW¼NE¼;
Sec. 19, lots 3 and 4, E½SW¼, and S½SE¼;
Sec. 20 E½NE¼, NW¼NE¼, NE¼NW¼, W½SW¼, and SE¼SW¼;
Sec. 21, NE¼, N½NW¼, and S½SW¼;
Sec. 22, NW¼;
Sec. 28, W½NE¼, E½NW¼, NW¼NW¼, and SW¼SW¼;
Sec. 29, W½NE¼, W½, and SE¼;
Sec. 30, lots 1 and 2, N½NE¼, SW¼NE¼, E½NW¼, and SE¼SE¼;
Sec. 31, lots 2 and 3, NE¼NE¼, and SW¼SE¼;
Sec. 32, N½N½, SE¼NE¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 33, S½NE¼, N½SE¼, and SE¼SE¼;
Sec. 34, NW¼NE¼, N½NW¼, and SW¼SW¼.

T. 35 N., R. 4 E.,
Sec. 2, lot 2, SW¼NE¼, E½SW¼, and NW¼SE¼.

T. 36 N., R. 4 E.,
Sec. 1, lots 1, 2, and 3, S½NE¼, and NE¼SE¼;
Sec. 9, SE¼;
Sec. 10, lots 3 and 4, and E½SW¼;
Sec. 24, lots 1 to 4, inclusive, N½NE¼, SW¼NE¼, and NW¼NW¼;
Sec. 25, lots 1 to 6, inclusive, NE¼, SE¼NW¼, and N½SW¼;
Sec. 26, SE¼NE¼, E½SE¼, and SW¼SE¼;
Sec. 34, E½NE¼ and SW¼NE¼;
Sec. 35, E½NE¼;
Sec. 36, lots 1, 2, 3, and 5.

T. 37 N., R. 4 E.,
Sec. 34, N½N½ and SW¼NE¼;
Sec. 35, NW¼NW¼.

T. 35 N., R. 5 E.,
Sec. 5, lot 4, SW¼NW¼, and NE¼SW¼;
Sec. 6, lots 1, 2 and 5, and SW¼NE¼.

T. 36 N., R. 5 E.,
Sec. 3, lot 1 and NE¼SE¼;

Sec. 4, W½SW¼;
Sec. 5, SW¼SW¼;
Sec. 6, lot 6, NE¼SW¼, and SE¼SE¼;
Sec. 7, lot 1, N½NE¼, and NE¼NW¼;
Sec. 8, E½NE¼, NW¼NE¼, and W½NW¼;
Sec. 9, NW¼NW¼;
Sec. 14, S½SW¼;
Sec. 18, N½NE¼;
Sec. 19, lots 1 to 9, inclusive, N½NE¼, NE¼NW¼, SE¼SW¼, and SW¼SE¼;
Sec. 20 lots 1 to 5, inclusive, N½, N½SE¼;
Sec. 21, N½N½, SE¼NE¼, N½SW¼, and SE¼SE¼;
Sec. 22, W½NW¼, and E½SE¼;
Sec. 23, W½NE¼, SE¼NE¼, NE¼NW¼, S½SW¼, and SW¼SE¼;
Sec. 26, NW¼NW¼;
Sec. 27, W½W½, SE¼SW¼, and SW¼SE¼;
Sec. 28, SE¼NE¼ and SE¼;
Sec. 29, lots 1 to 5, inclusive, lots 7 to 10, inclusive, SW¼NW¼, N½SW¼, and SW¼SW¼;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, MS 3418, E½, NE¼NW¼, and SE¼SW¼;
Sec. 32, lots 1 to 5, inclusive, E½NE¼, SW¼NE¼;
Sec. 34, N½NE¼.

T. 37 N., R. 5 E.,
Sec. 29, SE¼SE¼;
Sec. 30, SE¼SW¼.

The areas described aggregate approximately 19,764.74 acres in Toole and Liberty Counties, Montana.

The purpose of the proposed withdrawal is to preserve the status quo for the above described public lands, which are either located within or border the Sweet Grass Hills Area of Critical Environmental Concern. The specific objective of this proposal is to protect high value potential habitat for reintroduction of endangered peregrine falcons, areas of traditional religious importance to Native Americans, aquifers that currently provide the only potable water in the area, and seasonally important elk and deer habitat, pending consideration of proposed withdrawal legislation introduced into the 104th Congress, 1st Session. This legislation would, among other things, protect the above described lands and associated resource values from the location of new mining claims.

A withdrawal application, when filed, will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the above described public lands will be segregated temporarily from location and entry under the United States mining laws, subject to valid existing rights, unless the application is denied or canceled or the withdrawal is approved prior to the end of the segregation period.

The temporary uses which may be permitted during this segregative period are those that are currently permitted, including but not limited to the collection of mineral data necessary to determine the validity of existing mining claims, maintenance of existing communication sites, acceptance of applications for new communication sites on East Butte, and activities which will not disturb the surface (such as hunting, hiking, camping, Native American religious practices, water sampling, and vegetation inventories). The existing road closure that is in effect for the Sweet Grass Hills will not be continued. Limited motorized use is available by permit only to livestock ranchers with leases and selected State and Federal government activities. Exploration and development on existing oil and gas leases, minor forest product sales, such as post and pole sales, livestock grazing on existing leases, and maintenance and repair of livestock facilities are allowed. Applications will also be accepted for supporting rights-of-way for local ranching and domestic needs.

Dated: July 24, 1995.

**Bob Armstrong,**

*Assistant Secretary of the Interior.*

[FR Doc. 95–18509 Filed 7–27–95; 8:45 am]

BILLING CODE 4310–DN–P

## Minerals Management Service

### Outer Continental Shelf, Central Gulf of Mexico, Oil and Gas Lease Sale 152—Extension

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice to extend post-sale evaluation period for Central Gulf of Mexico Lease Sale 142.

**SUMMARY:** This notice extends by 14 days, the post-sale evaluation period for Central Gulf of Mexico Lease Sale 152. The lease notice was published in the **Federal Register** on April 7, 1995 (60 FR 17797). The Minerals Management Service (MMS) will complete evaluating all the bids received in this sale by August 22, 1995. On May 10, 1995, a record rainfall severely flooded the New Orleans area. The post-sale bid evaluation process has experienced delays because of water damage to the Gulf of Mexico regional office. MMS needs this extension to properly evaluate the bids received.

**DATES:** The post-sale evaluation period ends on August 22, 1995.

**FOR FURTHER INFORMATION CONTACT:** John Mirabella or Kumkum Ray, Engineering and Standards Branch, telephone (703) 787–1600.

Dated: July 21, 1995.

**Richard J. Glynn,**

*Associate Director for Offshore Minerals Management (Acting).*

[FR Doc. 95–18508 Filed 7–27–95; 8:45 am]

BILLING CODE 4310–MR–M

## DEPARTMENT OF LABOR

## Employment Standards Administration

## Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 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 House Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3014, Washington, DC 20210.

## New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and State:

*Volume IV*

Illinois
IL950048 (Jul. 28, 1995)

*Volume VI*

Idaho
ID950013 (Jul. 28, 1995)
Idaho
ID950014 (Jul. 28, 1995)

## Modifications 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*

New York
NY950008 (Feb. 10, 1995)
NY950009 (Feb. 10, 1995)
NY950012 (Feb. 10, 1995)
NY950020 (Feb. 10, 1995)
NY950031 (Feb. 10, 1995)
NY950037 (Feb. 10, 1995)

*Volume II*

District of Columbia
DC950001 (Feb. 10, 1995)
Maryland
MD950010 (Feb. 10, 1995)
MD950035 (Feb. 10, 1995)
MD950043 (Feb. 10, 1995)
MD950048 (Feb. 10, 1995)
Pennsylvania
PA950014 (Feb. 10, 1995)
Virginia
VA950104 (Feb. 10, 1995)
VA950105 (Feb. 10, 1995)
West Virginia
WV950002 (Feb. 10, 1995)
WV950006 (Feb. 10, 1995)

*Volume III*

Florida
FL950001 (Feb. 10, 1995)
FL950009 (Feb. 10, 1995)
Tennessee
TN950001 (Feb. 10, 1995)
TN950005 (Feb. 10, 1995)

*Volume IV*

None

*Volume V*

Arkansas
AR950001 (Feb. 10, 1995)
AR950008 (Feb. 10, 1995)
Iowa
IA950003 (Feb. 10, 1995)
IA950004 (Feb. 10, 1995)
IA950005 (Feb. 10, 1995)
IA950013 (Feb. 10, 1995)
Kansas
KS950012 (Feb. 10, 1995)
Missouri
MO950001 (Feb. 10, 1995)
New Mexico
NM950001 (Feb. 10, 1995)
NM950005 (Feb. 10, 1995)
Oklahoma
OK950013 (Feb. 10, 1995)
OK950016 (Feb. 10, 1995)
OK950017 (Feb. 10, 1995)
OK950024 (Feb. 10, 1995)
Texas
TX950001 (Feb. 10, 1995)
TX950003 (Feb. 10, 1995)
TX950005 (Feb. 10, 1995)

*Volume VI*

California
CA950002 (Feb. 10, 1995)
Colorado
CO950024 (Feb. 10, 1995)
Idaho
ID950004 (Feb. 10, 1995)
ID950005 (Feb. 10, 1995)
Nevada
NV950001 (Feb. 10, 1995)
NV950002 (Feb. 10, 1995)
NV950005 (Feb. 10, 1995)
NV950006 (Feb. 10, 1995)
NV950007 (Feb. 10, 1995)
Oregon
OR950001 (Feb. 10, 1995)
Utah
UT950001 (Feb. 10, 1995)
UT950004 (Feb. 10, 1995)
UT950007 (Feb. 10, 1995)
UT950034 (Feb. 10, 1995)
Washington
WA950001 (Feb. 10, 1995)
WA950002 (Beb. 10, 1995)
WA950003 (Feb. 10, 1995)
WA950005 (Feb. 10, 1995)
WA950007 (Feb. 10, 1995)
WA950008 (Feb. 10, 1995)
WA950011 (Feb. 10, 1995)
WA950013 (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 and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board Systems of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 21st day of July 1995.

**Alan L. Moss,**

*Director, Division of Wage Determinations.*

[FR Doc. 95–18406 Filed 7–27–95; 8:45 am]

BILLING CODE 4510–27–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meeting of Humanities Panel

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

**SUPPLEMENTARY INFORMATION:** The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code..

1. *Date:* August 24–25, 1995.
*Time:* 9:00 a.m. to 5:30 p.m.
*Room:* M–07.
*Program:* This meeting will review applications submitted to Humanities Projects in Libraries and Archives program during the July 15, 1995 deadline, submitted to the Division of Public Programs, for projects beginning after December 1, 1995.

**David C. Fisher,**

*Advisory Committee Management Officer.*

[FR Doc. 95–18580 Filed 7–27–95; 8:45 am]

BILLING CODE 7536–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. STN 50–456 and STN 50–457]**

### Commonwealth Edison Company; Braidwood Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. NPF–72 and NPF–77, issued to Commonwealth Edison Company (ComEd, the licensee), for operating of Braidwood Station, Units 1 and 2, located in Will County, Illinois.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action is in accordance with the licensee's application for an exemption from certain requirements of 10 CFR 73.55, ''Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage.'' The requested exemption would allow the implementation of a hand geometry biometric system of site access control in conjunction with photograph identification badges, and would allow the badges to be taken off site.

*The Need for the Proposed Action*

Pursuant to 10 CFR 73.55(a), the licensee is required to establish and maintain an onsite physical protection system and security organization.

In 10 CFR 73.55(d), ''Access Requirements,'' it specifies in part that ''The licensee shall control all points of personnel and vehicle access into a protected area.'' In 10 CFR 73.55(d)(5), it specifies in part that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' It further indicates that an individual not employed by the licensee (e.g., contractors) may be authorized access to protected areas without an escort provided the individual, ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area.''

Currently, unescorted access for both employee and contractor personnel into the Braidwood Station, Units 1 and 2, is controlled through the use of picture badges. Positive identification of personnel who are authorized and request access into the protected area is established by security personnel making a visual comparison of the individual requesting access and that individual's picture badge. The picture badges are issued, stored, and retrieved at the entrance/exit location to the protected area. In accordance with 10 CFR 73.55(d)(5), contractor personnel are not allowed to take their picture badges off site. In addition, in accordance with the plant's physical security plan, the licensee's employees are also not allowed to take their picture badges off site. The licensee proposes to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve picture badges at the entrance/exit location to the protected area. The proposal would also allow contractors who have unescorted access to keep their picture badges in their possession when departing the Braidwood site. In addition, the site security plans will be revised to allow implementation of the hand geometry system and to allow employees and contractors with unescorted access to keep their picture badges in their possession when leaving the Braidwood site.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed action. In addition to their picture badges, all individuals with authorized unescorted access will have the physical characteristics of their hand (hand geometry) registered with their picture badge number in a computerized access control system. Therefore, all authorized individuals must not only have their picture badges to gain access into the protected area, but must also have their hand geometry confirmed.

All other access processes, including search function capability and access revocation, will remain the same. A security officer responsible for access control will continue to be positioned within a bullet-resistant structure. The proposed system is only for individuals with authorized unescorted access and will not be used for individuals requiring escorts.

The underlying purpose for requiring that individuals not employed by the licensee must receive and return their picture badges at the entrance/exit is to provide reasonable assurance that the access badges could not be compromised or stolen with a resulting risk that an unauthorized individual could potentially enter the protected area. Although the proposed exemption will allow individuals to take their picture badges off site, the proposed measures require not only that the picture badge be provided for access to the protected area, but also that

verification of the hand geometry registered with the badge be performed as discussed above. Thus, the proposed system provides an identity verification process that is equivalent to the existing process.

Accordingly, the Commission concludes that the exemption to allow individuals not employed by the licensee to take their picture badges off site will not result in an increase in the risk that an unauthorized individual could potentially enter the protected area. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed action.

The proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the proposed action would be to deny the requested action. Denial of the requested action would not significantly enhance the environment in that the proposed action will result in a process that is equivalent to the existing identification verification process.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Braidwood Station, Units 1 and 2.

*Agencies and Persons Consulted*

In accordance with its stated policy, on July 19, 1995, the staffer consulted with the Illinois State Official, Mr. Mike Parker, Chief 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 foregoing 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 22, 1995, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wilmington Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 21st day of July 1995.

For the Nuclear Regulatory Commission.

**Ramin R. Assa,**

*Project Manager, Project Directorate, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 95–18558 Filed 7–27–95; 8:45 am]

BILLING CODE 7590–01–M

## Advisory Committee on Reactor Safeguards; Cancellation of Meeting

The 424th meeting of the Advisory Committee on Reactor Safeguards scheduled to be held on August 10–12, 1995, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland has been cancelled. The date of this meeting was previously published in the **Federal Register** on Wednesday, December 28, 1994 (59 FR 66977).

For further information contact: Mr. Sam Duraiswamy, Chief Nuclear Reactors Branch, (telephone 301–415–7364), between 7:30 a.m. and 4:15 p.m. EDT.

Dated: July 24, 1995.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 95–18556 Filed 7–27–95; 8:45 am]

BILLING CODE 7590–01–M

**[Docket No. 50–458]**

## Entergy Operations, Inc., Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc. (the licensee) to withdraw its September 8, 1994, application for proposed amendment to Facility Operating License No. NPF–47 for the River Bend Station, Unit No. 1, located in West Feliciana Parish.

The proposed amendment would have revised the technical specifications pertaining to bypassing the rod withdrawal limiter notch constraints while performing fuel power suppression testing.

The Commission had previously issued a Consideration of Issuance of Amendment published in the **Federal Register** on September 16, 1994 (59 FR 47652). However, by letter dated July 14, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 8, 1994, and the licensee's letter dated July 14, 1995, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Dated at Rockville, Maryland, this 20th day of July 1995.

For the Nuclear Regulatory Commission.

**David L. Wigginton,**

*Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 95–18557 Filed 7–27–95; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

## Generalized System of Preferences (GSP); Notice Regarding the 1995 Annual GSP Review

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of the product petitions that are being accepted for consideration in the 1995 Annual GSP Review.

**SUMMARY:** This notice announces the acceptance of petitions that were filed in the 1995 Annual GSP Review requesting a modification in the list of articles that are eligible for duty-free treatment under the GSP program.

**FOR FURTHER INFORMATION CONTACT:** GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, N.W., Room 518, Washington, D.C. 20506. The telephone number is (202) 395–6971.

**SUPPLEMENTARY INFORMATION:** The GSP program grants duty-free treatment to designated eligible articles that are imported from designated beneficiary developing countries. The GSP program is authorized by Title V the Trade Act of 1974, as amended (''Trade Act'') (19 U.S.C. 2461 *et seq.*), and was implemented by Executive Order 11888 of November 24, 1975, and modified by subsequent Executive Orders and Presidential Proclamations. The GSP regulations provided for an annual GSP

review, unless otherwise specified by **Federal Register** notice (15 CFR 2007.3 *et seq*.).

In a notice dated May 4, 1995, USTR initiated the 1995 Annual GSP Review and announced a deadline of June 14, 1995 for the filing of petitions (60 FR 22083). USTR received petitions requesting that products be added to, or removed from, the list of articles that are eligible for duty-free treatment under the GSP program, or that a country be granted a waiver of the ''competitive need limits'' (CNLs) for an eligible article. The CNLs are set forth in section 504(c) of the Trade Act (19 U.S.C. 2464(c)).

USTR also received petitions requesting that certain practices in certain beneficiary developing countries be reviewed to determine whether such countries are in compliance with the eligibility criteria that are set forth in sections 502(b) and 502(c) of the Trade Act (19 U.S.C. 2462(b) and 2462(c)). The consideration of these so-called ''country practice'' petitions is ongoing.

In accordance with the statutory and regulatory requirements, USTR has reviewed all of the product petitions and has decided which petitions should be accepted for consideration in the 1995 Annual GSP Review. The annex to this notice sets forth the products and the actions that will be considered in the 1995 Annual GSP Review.

Ordinarily, at the time that USTR announces the acceptance of petitions for review, we announce a review timetable that includes a public hearing and an opportunity for public comment on the products and actions that are being considered in the annual review. We are not announcing a review timetable at this time, however, because the GSP program expires on July 31, 1995. Once the program is reauthorized by the Congress, then USTR will announce a review timetable and offer an opportunity for public comment.

As noted above, the consideration of the ''country practice'' petitions is ongoing. USTR will announce which ''country practice'' petitions are being accepted for review once the GSP program has been reauthorized.

**Frederick L. Montgomery,**

*Chairman, Trade Policy Staff Committee.*

BILLING CODE 3901–01–M

Annex

| Case No. | HTS Subheading | Article | Petitioner |
|---|---|---|---|
| | | [The bracketed language in this Annex has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.] | |
| A. | | Petitions to add products to the list of eligible articles for the Generalized System of Preferences. | |
| | | Other nuts, fresh or dried, whether or not shelled or peeled: | |
| | | Other: | |
| | | Other: | |
| | | Shelled: | |
| 95-1 | 0802.90.9090(pt.)[1/] | Kola nuts | McCormick & Company, Incorporated, Sparks, MD |
| | | Acyclic hydrocarbons: | |
| | | Unsaturated: | |
| | | [Articles provided for in subheadings 2901.21.00 through 2901.24.50, inclusive] | |
| | | Other: | |
| | | [Derived in whole or in part from petroleum, shale oil or natural gas] | |
| 95-2 | 2901.29.50 | Other | Sasol Alpha Olefins, South Africa |
| | | Amine-function compounds: | |
| | | Aromatic polyamines and their derivatives; salts thereof: | |
| | | o-, m-, p-Phenylenediamine, diaminotoluenes, and their derivatives; salts thereof: | |
| | | Other: | |
| | | Other: | |
| 95-3 | 2921.51.50(pt.) | N-(1,3-Dimethylbutyl)-N'-phenyl-1,4-diaminobenzene | Government of Slovakia; Duslo a.s. Sala, Slovakia; Petrimex a.s. Bratislava, Slovakia; Prochimie International, Inc., New York, NY |
| | | Other heterocyclic compounds: | |
| | | Compounds containing a benzothiazole ring-system (whether or not hydrogenated), not further fused: | |
| | | Other: | |
| | | Other: | |
| 95-4 | 2934.20.80(pt.) | Benzothiazyl-2-cyclohexyl-sulfenamide | Government of Slovakia; Istrochem, Slovakia; Prochimie International, Inc., New York, NY |

1/ The petitioner also requests a waiver of the competitive need limit for Cote d'Ivoire on kola nuts provided for in subheading 0802.90.9090.

Annex (con.)
-2-

| Case No. | HTS Subheading | Article | Petitioner |
|---|---|---|---|
| A. | | Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.) | |
| | | Carpets and other textile floor coverings, knotted, whether or not made up: Of wool or fine animal hair: [Articles provided for in subheadings 5701.10.13 or 5701.10.16] | |
| | | Other: Hand-hooked, that is, in which the tufts were inserted by hand or by means of a hand tool: | |
| 95-5 | 5701.10.40(pt.) | Certified handloomed and folklore products | Government of Nepal; Kuber Handicrafts, Nepal |
| 95-6 | 6901.00.00 | Bricks, blocks, tiles and other ceramic goods of siliceous fossil meals (for example, kieselguhr, tripolite or diatomite) or of similar siliceous earths | Government of Venezuela; Ceramica Carabobo, S.A.C.A., Venezuela |
| | | Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Radiobroadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy: [Combined with sound recording or reproducing apparatus] | |
| | | Other: [FM only or AM/FM only] | |
| 95-7 | 8527.29.80 | Other | Ford Motor Company, Dearborn, MI |
| | | Parts of railway or tramway locomotives or rolling stock: Truck assemblies, axles and wheels, and parts thereof: Other, including parts: Axles and parts thereof: | |
| 95-8 | 8607.19.03 | Axles | Swasap Works, South Africa |
| B. | | Petitions to remove products from the list of eligible articles for the Generalized System of Preferences. | |
| | | Pencils (other than those pencils of heading 9608), crayons, pencil leads, pastels, drawing charcoals, writing or drawing chalks and tailors' chalks: | |
| 95-9 | 9609.10.00 | Pencils and crayons, with leads encased in a rigid sheath | Writing Instrument Manufacturers Association, Moorestown, NJ |

Annex (con.)
-3-

| Case No. | HTS Subheading | Article | Petitioner |
|---|---|---|---|
| C. | Petitions to remove duty-free status from beneficiary developing country/countries for a product on the list of eligible articles for Generalized System of Preferences. 1/ | | |
| | | Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid: | |
| | | Other: | |
| | | Other: | |
| | | Vegetables: | |
| 95-10 | 2001.90.39(pt.) (Chile) | Sweet bell-type peppers | Cherokee Products Company, Haddock, GA; Del Mar Food Products Corp., Watsonville, CA; Dunbar Foods Corp., Dunn, NC; Moody Dunbar, Inc., Limestone, TN; Furman Foods, Inc., Northumberland, PA; Monticello Canning Co., Inc., Crossville, TN; Saticoy Foods Corp., Saticoy, CA; The Mancini Packing Co., Zolfo Springs, FL |
| | | Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen: | |
| | | Other vegetables and mixtures of vegetables: | |
| | | Fruits of the genus Capsicum (peppers) or of the genus Pimenta (e.g., allspice): | |
| | | Other: | |
| | | Other: | |
| 95-11 | 2005.90.5510 (Chile) | Sweet bell-type peppers | do. |
| | | Manganese oxides: | |
| 95-12 | 2820.10.00 (South Africa) | Manganese dioxide | Ferroalloy Association, Washington, DC |
| | | Glass of heading 7003, 7004 or 7005, bent, edge-worked, engraved, drilled, enameled or otherwise worked, but not framed or fitted with other materials: | |
| | | [Strips not over 15.2 cm in width, measuring over 2 mm in thickness, and having all longitudinal edges ground or otherwise smoothed or processed] | |
| | | Other: | |
| | | [Glass, drawn or blown and not containing wire netting and not surface ground or polished] | |
| 95-13 | 7006.00.40 (Indonesia) | Other | Glasscraft, Memphis, TN |

1/ The country named is the beneficiary developing country specified by the petitioner. While the Trade Policy Staff Committee (TPSC) review will focus on that country, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner as well the GSP status of the entire article.

Annex (con.)
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| Case No. | HTS Subheading | Article | Petitioner |
|---|---|---|---|
| D. | Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. | | |
| | | Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs: Fish, whole or in pieces, but not minced: Anchovies: | |
| 95-14 | 1604.16.10 (Morocco) | In oil, in airtight containers: For an aggregate quantity entered in any calendar year not to exceed 3,000 metric tons | Government of Morocco |
| 95-15 | 1604.16.30 (Morocco) | Other | do. |
| | | Acyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives: Saturated monohydric alcohols: Methanol (Methyl alcohol): [Imported only for use in producing synthetic natural gas (SNG) or for direct use as a fuel] | |
| 95-16 | 2905.11.20 (Venezuela) | Other | Petroquimica de Venezuela, S.A., Venezuela |
| | | Ethers, ether-alcohols, ether-phenols, ether-alcohol-phenols, alcohol peroxides, ether peroxides, ketone peroxides (whether or not chemically defined), and their halogenated, sulfonated, nitrated or nitrosated derivatives: Acyclic ethers and their halogenated, sulfonated, nitrated or nitrosated derivatives: Other: Ethers of monohydric alcohols: | |
| 95-17 | 2909.19.1010 (Venezuela) | Methyl tertiary-butyl ether (MTBE) | Ecofuel, S.p.A., Italy |
| | | Polycarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic polycarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: | |
| 95-18 | 2917.37.00 (Romania) | Dimethyl terephthalate | Government of Romania |

Annex (con.)
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| Case No. | HTS Subheading | Article | Petitioner |
|---|---|---|---|
| | | Heterocyclic compounds with nitrogen hetero-atom(s) only; nucleic acids and their salts: | |
| | | Compounds containing an unfused pyridine ring (whether or not hydrogenated) in the structure: | |
| | | [Pyridine and its salts] | |
| | | Other: | |
| | | [Articles provided for in subheadings 2933.39.05 through 2933.39.20, inclusive] | |
| | | Other: | |
| | | Pesticides: | |
| | | Herbicides: | |
| | | [o-Paraquat dichloride] | |
| 95-19 | 2933.39.25 (Brazil) | Other | American Cyanamid Company, Wayne, NJ |
| | | Compounds containing a quinoline or isoquinoline ring-system (whether or not hydrogenated), not further fused: | |
| | | [Articles provided for in subheadings 2933.40.08 through 2933.40.17, inclusive] | |
| | | Other: | |
| 95-20 | 2933.40.30 (Brazil) | Pesticides | do. |
| | | Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: | |
| | | Other: | |
| | | Other: | |
| | | Fatty substances of animal or vegetable origin and mixtures thereof: | |
| 95-21 | 3823.90.4020 (Malaysia) | Mixtures of fatty acid esters | Proctor & Gamble Company, Cincinnati, OH |
| | | Leather of bovine or equine animals, without hair on, other than leather of heading 4108 or 4109: | |
| | | Other bovine leather and equine leather, parchment-dressed or prepared after tanning: | |
| | | [Full grains and grain splits] | |
| | | Other: | |
| 95-22 | 4104.39.20 (Thailand) | Buffalo | Lackawanna Leather Company, Conover, NC |
| | | Leather of other animals, without hair on, other than leather of heading 4108 or 4109: | |
| | | [Of swine; of reptiles] | |
| | | Of other animals: | |
| 95-23 | 4107.90.60 (South Africa) | Fancy | Government of South Africa |

Annex (con.)
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| Case No. | HTS Subheading | Article | Petitioner |
|---|---|---|---|
| D. | Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.) | | |
| | | Articles of apparel and clothing accessories, of leather or of composition leather: Gloves, mittens and mitts: Specially designed for use in sports: Baseball and softball gloves and mitts (including batting gloves): | |
| 95-24 | 4203.21.20 (Indonesia) | Batting gloves | Government of Indonesia |
| | | Roofing tiles, chimney pots, cowls, chimney liners, architectural ornaments and other ceramic constructional goods: | |
| 95-25 | 6905.10.00 (Venezuela) | Roofing tiles | Alfareria El Volcan, C.A., Venezuela; Interclay Corporation, Miami, FL |
| | | Stranded wire, cables, plaited bands and the like, including slings and similar articles, of aluminum, not electrically insulated: [With steel core] Other: Not fitted with fittings and not made up into articles: | |
| 95-26 | 7614.90.20 (Venezuela) | Electrical conductors | Government of Venezuela; Conal, C.A., Venezuela; Sural C.A., Venezuela |
| | | Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; parts thereof: Compressors of a kind used in refrigerating equipment (including air conditioning): | |
| 95-27 | 8414.30.40 (Brazil) | Not exceeding 1/4 horsepower | Whirlpool Corporation, Benton Harbor, MI |
| | | Typewriters and word processing machines: Automatic typewriters and word processing machines: [Word processing machines] | |
| 95-28 | 8469.10.80 (Indonesia) | Other | Government of Indonesia |

Annex (con.)
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| Case No. | HTS Subheading | Article | Petitioner |
|---|---|---|---|
| D. | | Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.) | |
| | | Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included: | |
| | | [Articles provided for in subheadings 8471.10.00 or 8471.20.00] | |
| | | Other: | |
| | | [Articles provided for in subheading 8471.91] | |
| | | Input or output units, whether or not entered with the rest of a system and whether or not containing storage units in the same housing: | |
| | | [Combined input/output units] | |
| | | Other: | |
| | | [Keyboards] | |
| | | Display units: | |
| | | Other: | |
| 95-29 | 8471.92.32 (Malaysia) | With color cathode-ray tube (CRT) | Apple Computer, Inc., Cupertino, CA |
| 95-30 | 8471.92.32 (Thailand) | With color cathode-ray tube (CRT) | Government of Thailand; Apple Computer, Inc., Cupertino, CA |
| | | [Printer units] | |
| | | Other: | |
| | | [Articles provided for in subheading 8471.92.80] | |
| | | Other: | |
| 95-31 | 8471.92.84 (Malaysia) | Optical scanners and magnetic ink recognition devices | Apple Computer, Inc., Cupertino, CA |
| | | Electrical apparatus for line telephony or telegraphy, including such apparatus for carrier-current line systems; parts thereof: | |
| 95-32 | 8517.10.00 (Thailand) | Telephone sets | Government of Thailand |
| | | Other apparatus: | |
| | | Telegraphic: | |
| 95-33 | 8517.82.40 (Malaysia) | Facsimile machines | Hewlett-Packard Company, Palo Alto, CA |
| 95-34 | 8517.82.40 (Thailand) | Facsimile machines | Cal-Comp Electronic (Thailand) Company Limited, Thailand; Canon U.S.A., Inc., Lake Success, NY; Sharp Appliances (Thailand) Limited, Thailand; Sharp Electronics Corporation, Mahwah, NJ |

Annex (con.)
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| Case No. | HTS Subheading | Article | Petitioner |
|---|---|---|---|
| D. | Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.) | | |
| | | Turntables, record players, cassette players and other sound reproducing apparatus, not incorporating a sound recording device: | |
| | | [Coin- or token-operated record players; other record players; turntables; transcribing machines] | |
| | | Other sound reproducing apparatus: | |
| | | [Cassette type] | |
| 95-35 | 8519.99.00 (Malaysia) | Other | Pioneer Technology (Malaysia) Sdn. Bhd., Malaysia; Santronics (M) Sdn. Bhd., Malaysia; Sanyo Fisher (USA) Corporation, Chatsworth, CA; Thomson Consumer Electronics, Inc., Indianapolis, IN |
| | | Magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device: | |
| | | [Dictating machines not capable of operating without an external source of power; telephone answering machines] | |
| | | Other magnetic tape recorders incorporating sound reproducing apparatus: | |
| 95-36 | 8520.31.00 (Malaysia) | Cassette type | Government of Malaysia |
| | | Video recording or reproducing apparatus, whether or not incorporating a video tuner: | |
| | | Magnetic tape-type: | |
| | | Color, cartridge or cassette type: | |
| | | [Not capable of recording] | |
| 95-37 | 8521.10.60 (Thailand) | Other | Government of Thailand; Orion Sales, Inc., Olney, IL; World Electric (Thailand) Ltd., Thailand |

Annex (con.)
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| Case No. | HTS Subheading | Article | Petitioner |
|---|---|---|---|
| D. | Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.) | | |
| | | Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: | |
| | | [Articles provided for in subheading 8527.11 or 8527.19] | |
| | | Radiobroadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy: | |
| | | Combined with sound recording or reproducing apparatus: | |
| 95-38 | 8527.21.10 (Brazil) | Radio-tape player combinations | Ford Motor Company, Dearborn, MI |
| 95-39 | 8527.21.10 (Malaysia) | Radio-tape player combinations | Sanyo Electric (Penang) Sdn. Bhd., Malaysia; Sanyo Fisher (USA) Corporation, Chatsworth, CA |
| | | Other radiobroadcast receivers, including apparatus capable of receiving also radiotelephony or radiotelegraphy: | |
| | | Combined with sound recording or reproducing apparatus: | |
| | | [Articles provided for in subheading 8527.31.05] | |
| | | Other: | |
| 95-40 | 8527.31.40 (Indonesia) | Combinations incorporating tape players which are incapable of recording | Government of Indonesia |
| | | Other apparatus: | |
| | | [Articles provided for in subheading 8527.90.40] | |
| | | Other: | |
| | | [Articles provided for in subheading 8527.90.50] | |
| 95-41 | 8527.90.90 (Philippines) | Other | Government of the Philippines Uniden America Corporation, Fort Worth, TX; Uniden Philippines, Inc., Philippines |

Annex (con.)
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| Case No. | HTS Subheading | Article | Petitioner |
|---|---|---|---|
| D. | Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences. (con.) | | |
| | | Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors: | |
| 95-42 | 8544.30.00 (Thailand) | Ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships | Government of Thailand; American Yazaki Corporation, Canton, MI |
| | | Photographic (other than cinematographic) cameras; photographic flashlight apparatus and flashbulbs other than discharge lamps of heading 8539; parts and accessories thereof: | |
| | | [Articles provided for in subheadings 9006.10.00 through 9006.40.90, inclusive] | |
| | | Other cameras: | |
| | | [With through-the-lens viewfinder (single lens reflex (SLR)), for roll film of a width not exceeding 35 mm] | |
| 95-43 | 9006.53.00 (Malaysia) | Other, for roll film of a width of 35 mm | Canon U.S.A., Inc, Lake Success, NY; Canon Opto (Malaysia) Sdn. Bhd., Malaysia |
| | | Photocopying apparatus incorporating an optical system or of the contact type and thermocopying apparatus; parts and accessories thereof: | |
| | | Electrostatic photocopying apparatus: | |
| 95-44 | 9009.12.00 (Thailand) | Operating by reproducing the original image via an intermediate onto the copy (indirect process) | Canon U.S.A., Inc, Lake Success, NY; Canon Hi-Tech (Thailand), Ltd., Thailand |
| | | Automatic regulating or controlling instruments and apparatus; parts and accessories thereof: | |
| | | [Thermostats; manostats] | |
| | | Other instruments and apparatus: | |
| | | [Hydraulic and pneumatic] | |
| | | Other: | |
| | | [Automatic voltage and voltage-current regulators] | |
| 95-45 | 9032.89.60 (Philippines) | Other | Telefunken Microelectronic (Phil.), Inc., Philippines |

[FR Doc. 95–18731 Filed 7–27–95; 8:45 am]
BILLING CODE 3901–01–C

## PENSION BENEFIT GUARANTY CORPORATION

### Request for OMB Extension of Approval for Information Collection: Liability on Termination of or Withdrawal From a Single-Employer Plan

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of request for OMB approval of extension.

**SUMMARY:** This notice advises the public that the Pension Benefit Guaranty Corporation has requested an extension of approval by the Office of Management and Budget for a currently-approved collection of information (1212–0017) contained in its regulation on Liability on Termination of or Withdrawal from a Single-Employer Plan (29 CFR Part 2622). Current approval of this collection of information expires on September 30, 1995.

**ADDRESSES:** All written comments should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212–0017), Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street NW., Washington, DC 20005–4026, between the hours of 9:00 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; telephone 202–326–4024 (202–326–4179 for TTY and TDD).

**SUPPLEMENTARY INFORMATION:** The Pension Benefit Guaranty Corporation (''PBGC'') is requesting that the Office of Management and Budget extend for three years the approval of the collection of information contained in the PBGC's regulation on Liability on Termination of or Withdrawal from a Single-Employer Plan, 29 CFR Part 2622. Section 4062 of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1362 (''ERISA''), provides that the contributing sponsor of a single-employer pension plan and members of the sponsor's controlled group (''the employer'') incur liability (''employer liability'') if the plan terminates with assets insufficient to pay benefit liabilities under the plan. However, the PBGC's statutory lien for employer liability and the payment terms for employer liability are affected by whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

Section 2622.6 of the PBGC's employer liability regulation (29 CFR 2622.6) requires a contributing sponsor or member of the contributing sponsor's controlled group that believes employer liability upon plan termination exceeds 30 percent of the employer's net worth to so notify the PBGC and submit to the PBGC net worth information. This information is necessary to enable the PBGC to determine whether and to what extent employer liability exceeds 30 percent of the employer's net worth

The PBGC estimates that, for the next three years, 39 employers per year will respond to this collection of information and the average amount of time required to respond will be 24 hours. Thus, the PBGC estimates that the annual burden of this collection of information will be 936 hours.

Issued at Washington, DC this 24th day of July, 1995.

**Martin Slate,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 95–18607 Filed 7–27–95; 8:45 am]

BILLING CODE 7708–01–M

### Request for OMB Approval of Information Collection: Disclosure to Participants

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of request for OMB approval.

**SUMMARY:** This notice advises the public that the Pension Benefit Guaranty Corporation has requested approval by the Office of Management and Budget for a new collection of information contained in its regulation on Disclosure to Participants (29 CFR part 2627).

**ADDRESSES:** All written comments should be addressed to: Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503. The request for approval will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005–4026.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, or Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; telephone 202–326–4024 (202–326–4179 for TTY and TDD).

**SUPPLEMENTARY INFORMATION:** The PBGC is requesting that the Office of Management and Budget approve for three years the collection of information contained in the PBGC's final regulations on Disclosure to Participants, 29 CFR Part 2627.

Section 4011 of the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1311), which was added to ERISA by the Retirement Protection Act of 1994, requires plan administrators of certain underfunded single-employer pension plans to provide an annual notice to plan participants and beneficiaries of the plan's funding status and the limits on the PBGC's guarantee.

On June 30, 1995 (60 FR 34412), the PBGC issued final regulations implementing section 4011. (On July 19, 1995, (60 FR 36998) the PBGC published a clarifying correction to the final regulations.) The regulations, which are effective on July 31, 1995, prescribe 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 notice will provide recipients with meaningful, understandable, and timely information that will help them become better informed about their plans and assist them in their financial planning.

This collection of information, which is a disclosure to third parties, is not currently subject to the requirements of the Paperwork Reduction Act (*Dole* v. *United Steelworkers of America*, 494 U.S. 26 (1990)). However, under recent legislation, the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 109 Stat. 163 (1995)), this collection of information will be subject to those requirements effective October 1, 1995.

Small plans (plans with 100 or fewer participants) are exempt from the notice requirement in 1995. The PBGC estimates that approximately 3,000 large plans (plans with more than 100 participants) will be subject to the notice requirement for the 1995 plan year and that the same number of large plans plus approximately 4,500 small plans will be subject to the notice requirement for subsequent years. Thus, over the next three years, an average of 6,000 plans per year will respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information will be 4.39 hours per plan, with an average total annual burden of 26,330 hours.

Issued at Washington, DC this 24th day of July, 1995.

**Martin Slate,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 95–18608 Filed 7–27–95; 8:45 am]

BILLING CODE 7708–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–36010; File No. SR–Amex–95–27]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to a Three Month Extension of Its Pilot Program That Amended Rule 109 to Permit Specialists to Grant Stops in a Minimum Fractional Change Market

July 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on July 6, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange requests a three month extension of a pilot program that amended Exchange Rule 109 to permit a specialist, upon request, to grant stops in a minimum fractional change market.[1]

The text of the proposed rule change is available at the Amex and at the Commission.

[1] The Amex received approval to amend Rule 109, on a pilot basis, in Securities Exchange Act Release No. 30603 (Apr. 17, 1992), 57 FR 15340 (Apr. 27, 1992) (File No. SR–Amex–91–05) (''1992 Approval Order''). The Commission subsequently extended the Amex's pilot program in Securities Exchange Act Release Nos. 32185 (Apr. 21 1993), 58 FR 25681 (Apr. 27, 1993) (File No. SR–Amex–93–10) (''April 1993 Approval Order''); 32664 (July 21, 1993), 58 FR 40171 (July 27, 1993) (File No. SR–Amex–93–22) (''July 1993 Approval Order''); 33791 (Mar. 21, 1994), 59 FR 14432 (Mar. 28 1994) (File No. SR–Amex–93–47) (''1994 Approval Order''); and 35310 (Jan. 31, 1995), 60 FR 7236 (Feb. 7, 1995) (File No. SR–Amex–95–01) (''January 1995 Approval Order'').

### II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspect of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On January 31, 1995, the Commission extended its pilot approval of amendments to Exchange Rule 109 until July 21, 1995.[2] The amendments permit a specialist, upon request, to grant a stop [3] in a minimum fractional change market [4] for any order of 2,000 shares or less, up to a total of 5,000 shares for all stopped orders, provided there is an order imbalance, without obtaining prior Floor Official approval. A Floor Official, however, must authorize a greater order size of aggregate share threshold.

During the course of the pilot program, the Exchange has closely monitored compliance with the rule's requirements, analyzed the impact on orders on the specialist's book resulting from the execution of stopped orders at a price that is better than the stop price, and reviewed market depth in a stock when a stop is granted in a minimum fractional change market. The Exchange believes that the amendments to Rule 109 have provided a benefit to investors by providing an opportunity for price improvement, while increasing market depth and continuity without adversely affecting orders on the specialist's book. The Exchange is therefore proposing a three month extension of the pilot program that amended Exchange Rule 109.

[2] *See* January 1995 Approval Order, *supra,* note 1.

[3] An agreement to ''stop'' stock at a specified price constitutes a guarantee by the member who grants the stop that the order of the member who accepts the stop will be executed at the stop price or better. *See* Amex Rule 109(a).

[4] Amex Rule 127 sets forth the minimum fractional changes for securities traded on the Exchange.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendments to Rule 109 are consistent with these objectives in that they are designed to allow stops, in minimum fractional change market, under limited circumstances that provide for the possibility of price improvement to customers whose orders are granted stops.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex–95–27 and should be submitted by August 18, 1995.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5)[5] and Section 11(b)[6] of the Act. The Commission believes that the amendments to rule 109 should further the objectives of Section 6(b)(5) and Section 11(b) through pilot program procedures designed to allow stops, in minimum fractional change markets, under limited circumstances that provide the possibility of price improvement to customers whose orders are granted stops.

In the orders approving the pilot procedures,[7] the Commission asked the Amex to study the effects of stopping stock in a minimum fractional change market. The Exchange has submitted to the Commission several monitoring reports regarding the amendments to Rule 109. The Commission believes that the monitoring reports, especially the latest report, provide useful information regarding the effectiveness of the program during the pilot period. The Commission, however, finds that additional time is necessary to evaluate carefully and comprehensively the information provided by the Exchange and the Amex's use of its pilot procedures. Accordingly, the Commission believes that it is reasonable to extend the pilot program until October 21, 1995, to avoid compromising the benefit that investors might receive under Rule 109, as amended, while the Commission is considering whether to permanently approve the pilot program.[8]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission. No comments were received at that time.

[5] 15 U.S.C. 78f (1988 & Suppl. V 1993).

[6] 15 U.S.C. 78k (1988).

[7] *See supra,* note 1.

[8] *See* Securities Exchange Act Release No. 35909 (June 28, 1995), 60 FR 34562 (July 3, 1995) (notice of filing of proposed rule change relating to permanent approval of Amex's pilot program for stopping stock in a minimum fractional change market).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–Amex–95–27) is hereby approved on a pilot basis until October 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–18603 Filed 7–27–95; 8:45 am]

BILLING CODE 8010–10–M

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30–3(a)(12) (1994).

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**[Release No. 34–36014; File No. SR–Amex–95–19]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Temporary Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Amendments to Rule 170 Pertaining to Specialists' Liquidating Transactions

July 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 24, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex requests permanent approval of a pilot program that amends Exchange Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick, in the case of a ''long'' positions, or zero plus tick, when covering a ''short'' position, without Floor Official approval. The pilot program also amends Rule 170 to set forth the affirmative action that specialists are required to take subsequent to effecting various types of liquidating transactions. In the alternative, the Exchange is proposing a one year extension of the pilot program.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

## II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On April 22, 1994, the Commission approved, on a one year pilot basis, amendments to Exchange Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick, in the case of a ''long'' position, or a zero plus tick, when covering a ''short'' position, without Floor Official approval.[3] The amendments also set forth the affirmative action that specialists are required to take subsequent to effecting various types of liquidating transactions.

During the course of the pilot program, the Exchange has monitored compliance with the requirements of the Rule, and our findings in this regard have been forwarded to the Commission under separate cover. We believe that the amendments have provided specialists with flexibility in liquidating specialty stock positions in order to facilitate their ability to maintain fair and orderly markets, particularly during unusual market conditions. In addition, the specialist's concomitant obligation to participate as dealer on the opposite side of the market after a liquidating transaction has been strengthened.

The Exchange is therefore proposing approval of the amendments to Rule 170. In the alternative, the Exchange is requesting an extension of the pilot program for an additional one year period, if the Commission feels that further study and monitoring of the effects of the pilot program are necessary.

[3] The Commission approved the pilot program in Securities Exchange Act Release No. 33957 (April 22, 1994), 59 FR 22188 (April 29, 1994) (''1994 Approval Order''). On April 21, 1995, the Commission granted a three month extension to the pilot program, ending on July 21, 1995. Securities Exchange Release No. 35635 (April 21, 1995), 60 FR 20780 (April 27, 1995).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and further the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest. The proposed rule change is also consistent with Section 11(b) of the Act which allows exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–19 and should be submitted by August 18, 1995.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Sections 6(b)(5) and 11 of the Act.[4] The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest. The Commission also believes that the proposal is consistent with Section 11(b) of the Act and Rule 11b–1 thereunder,[5] which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

Under the pilot program, a specialist may liquidate a position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick only if such transactions are reasonably necessary for the maintenance of a fair and orderly market and only if the specialist has obtained the prior approval of a Floor Official. Liquidations on a zero minus or a zero plus tick, which previously required Floor Official approval, can be effected under the pilot procedures without a Floor Official's approval, but continue to be subject to the restriction that they be effected only when reasonably necessary to maintain a fair and orderly market. In addition, the specialist must maintain a fair and orderly market during the liquidation.

After the liquidation, a specialist is required to re-enter the market on the opposite side of the market from the liquidating transaction to offset any imbalances between supply and demand. During any period of volatile or unusual market conditions resulting in a significant price movement in a specialist's specialty stock, the specialist's re-entry into the market must reflect, at a minimum, his or her usual level of dealer participation in the specialty stock. In addition, during such periods of volatile market conditions or unusual price movements, re-entry into the market following a series of transactions must reflect a significant level of dealer participation.

In our 1994 Approval Order,[6] the Commission asked the Amex to submit a report setting forth the criteria developed by the Exchange to determine whether liquidating transactions effected by specialists pursuant to the pilot were necessary and appropriate in connection with fair and orderly markets. The Commission also asked the Amex to provide information regarding the Exchange's monitoring of liquidating transactions effected by specialists on any destabilizing tick. In addition, the Commission asked the Amex to provide the following information in its report: (1) a review of all liquidating transactions effected by specialists on any destabilizing ticks; (2) a review of liquidating transactions by specialists to determine that the required Floor Official approval was obtained where necessary; and (3) a review of liquidating transactions in light of dealer participation levels and re-entry into the market in terms of timing and support.

In April 1995, the Commission extended the pilot program for three months to give the Exchange additional time to prepare the report discussed above and submit the data to the Commission for its consideration of whether the pilot program should be granted permanent approval.[7] The Exchange submitted the report in May 1995. After reviewing the data, the Commission agrees with the Exchange that the pilot generally is working well. In particular, the Commission believes the report indicates that specialist generally are entering the aftermarket after effecting liquifying transactions when appropriate and that the Exchange has developed surveillance procedures that enable it to monitor specialists' reliquifying activity.

The Commission believes, however, that further monitoring of the pilot is necessary before permanent approval can be granted. In this regard, the Exchange should continue to emphasize the requirements of the rule, including the necessity for floor official approval of specialists' purchases and sales on direct plus or minus ticks, and that such transactions can only be effected if reasonably necessary for the maintenance of fair and orderly markets. In addition, where proper procedures are not followed, the Amex should take appropriate disciplinary action.

The Commission has therefore decided to extend the pilot program for one year. During the one year extension, the Commission expects the Amex to continue to monitor compliance with the pilot program procedures and report any non-compliance with the rule and the action the Amex has taken as a result of such non-compliance. The Amex should prepare an additional report as described above and submit the data to the Commission for its consideration of whether the pilot

[4] 15 U.S.C. 78f and 78k (1988).

[5] 17 CFR 240.11b–1 (1994).

[6] *See supra* note 3.

[7] *See supra* note 3.

program should be granted permanent approval.[8]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the Exchange proposes to continue using the identical procedures contained in the pilot program. The rule change that implemented the pilot program was published in the **Federal Register** for the full comment period,[9] and no comments were received. Furthermore, the Commission approved a similar rule change for the NYSE also without receiving comments on the proposal.[10]

*It therefore is ordered,* pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change is approved on an accelerated basis for a one year period ending on July 21, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–18600 Filed 7–27–95; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–36004; File No. SR–BSE–95–13]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Incorporated Relating to a Nine Month Extension of a Pilot Program for Stopping Stock in Minimum Variation Markets

July 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 12, 1995, the Boston Stock Exchange, Incorporated (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks a nine month extension of its pilot program regarding stopping stock in minimum variation markets.[1]

### II. Self-Regulatory Organization's Statement of the Propose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to extend the Commission approved pilot provision regarding the execution of stopped orders in minimum variation markets for an additional nine months. The pilot provision expires on July 21, 1995, and this proposal would extend the pilot until April 21, 1996.

The pilot rule requires the execution of stopped orders in minimum variation markets (a) after a transaction takes place on the primary market at the stop price or higher in the case of a buy order (lower in the case of a sell order), (b) after the applicable Exchange share volume is exhausted or (c) at any time prior to (a) or (b) if filled at an improved price.[2] In no event will a stopped order be executed at a price inferior to the stop price. The Exchange states that, as in the case of greater than minimum variation markets, the proposed rule will continue to benefit customers because they might receive a better price than the stop price, yet it also protects prior-entered same-price limit orders on the book.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it furthers the objectives to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either soliciteed or received.

### III. Solicitation of Comments

Interested persons are invited to submit written data; views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

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[8] The Commission requests that this report be submitted by April 1996, along with any requests for extension or permanent approval of the pilot.

[9] *See* Securities Exchange Act Release No. (August 25, 1993), 58 FR 45926 (August 31, 1993).

[10] *See* Securities Exchange Act Release No. 31797 (January 29, 1993), 58 FR 7277 (February 5, 1993).

[11] 15 U.S.C. 78s(b)(2) (1988).

[1] The Commission initially approved the BSE's proposal to codify procedures for stopping stock and to establish a separate pilot program for stopping stock in minimum variation markets in Securities Exchange Act Release No. 35068 (Dec. 8, 1994), 59 FR 64717 (Dec. 15, 1994) (File No. SR–BSE–94–09) (''1994 Pilot Approval Order''). The Commission subsequently extended the BSE's pilot program in Securities Exchange Act Release No. 35474 (Mar. 10, 1995), 60 FR 14471 (Mar. 17, 1995) (File No. SR–BSE–95–03) (''March 1995 Pilot Approval Order'').

[2] The Commission notes that, in certain narrow circumstances, a BSE specialist may execute a stopped order before limit order interest on the Exchange is exhausted. To do so, however, the specialist must make the determination that such action is necessary, in his or her professional judgment, to prevent an execution that would create a new high or new low, a double up or down tick or an out-of-range print.

Moreover, the specialist must follow certain procedures designeed to ensure that the BSE's limit order book is adequately protected. First, the specialist must split any contra-side order flow between the stopped order and limit orders with priority at the better price. In addition, if the specialist elects to fill a stopped order at a price better than the stop price before it is otherwise due an execution, he or she must allocate an equal number of shares, up to a maximum of 500 shares, to orders at that price on the limit order book. Finally, if any portion of a stopped order remains unexecuted at the end of the trading day, the specialist must fill such order in its entirety and, as described above, allocate an appropriate number of shares to the book.

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–95–13 and should be submitted by August 18, 1995.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)[3] and Section 11(b)[4] of the Act. Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The Commission also believes that the proposed rule change is consistent with the requirement of Section 11(b), and Rule 11b–1 thereunder.[5] that specialist transactions must contribute to the maintenance of fair and orderly markets.

The Commission historically has been concerned that the practice of stopping stock may compromise the specialist's fiduciary duty to unexecuted customer orders on the limit order book.[6] The Commission, however, has approved the practice in limited circumstances where the potential harm is offset by the improvement in the marketplace liquidity and the possibility of price improvement for the customer. Accordingly, those exchanges with stopping stock rules,[7] including the BSE, require their specialists to reduce the spread between the consolidated best bid and offer or, in a minimum variation market, to add size at the inside quote.[8] The Commission believes that such a requirement strikes an appropriate balance between the interests of various market participants. Moreover, by encouraging accurate representation of the trading interest held by the specialist, it also facilitates greater transparency in the securities market.

Despite these potential benefits, the Commission continues to be concerned that, in minimum variation markets, limit orders on the specialist's book may be bypassed when stopped orders are executed at a better price.[9] These concerns are particularly applicable to the BSE's pilot because of the Exchange's unique provisions regarding the execution of stopped orders at an improved price before pre-existing limit order interest at that price is exhausted.[10]

As a result, in the orders approving the BSE's pilot procedures,[11] the Commission asked the Exchange to study the effects of stopping stock in a minimum variation market. Specifically, the Commission requested information on (1) the number of orders stopped in minimum variation markets; (2) the average size of such orders; and (3) the percentage of stopped orders that received price improvement. In addition, the Commission encouraged the BSE to develop an appropriate measure of the pilot program's impact on limit orders, particularly those limit orders on the specialist's book ahead of the stopped stock.

Although the BSE has provided the Commission with the requested information on the number of orders stopped, their average size, and the percentage of such orders that received price improvement, the BSE has not yet developed a measure of the pilot's impact on limit orders. The Commission believes that the BSE needs to submit comprehensive data on the operation of this rule and, in particular, on the impact on limit orders on the specialist's book before the Commission can evaluate fairly the BSE's use of its pilot procedures. To allow such information to be gathered and reviewed, the Commission believes that it is reasonable to extend the pilot program until April 21, 1996. During this extension, the Commission expects the BSE to respond fully to the concerns set forth below.

Accordingly, before the Commission would consider another extension or permanent approval of the Exchange's pilot program, the BSE must submit comprehensive quantitative data on the impact of stopping stock in minimum variation markets on customer limit orders on the specialist's book and demonstrate that the Exchange has the technological capabilities necessary to monitor specialist compliance with the pilot procedures.

The Commission requests that the BSE calculate data based on twenty stocks chosen by the Commission during three different days showing (1) how many orders and shares were stopped in each stock, (2) the average number of limit orders and the average number of shares on the book ahead of the stopped stock, (3) how many orders and shares received price improvement, and (4) how many orders and shares were on the limit order book at the time each order was stopped and the number of such limit orders and shares that were not executed by the end of the trading day. The Exchange should provide the data for each stock for each day, aggregate figures for each stock for all three days, and for all stocks aggregate numbers for each day and for all three days. The Commission requests that the BSE submit a report describing

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[3] 15 U.S.C. 78f(b) (1988 & Supp. V 1993).

[4] 15 U.S.C. 78k (1988).

[5] 17 CFR 240.11b–1 (1994).

[6] *See e.g.*, SEC. Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt 2 (1963). When stock is stopped, book orders on the opposite side of the market that are entitled to immediate execution lose their priority. If the stopped order then receives a better price, limit orders at the stop price are bypassed and, if the market turns away from that limit, may never be executed.

[7] *See* NYSE Rule 116.30; American Stock Exchange (''Amex'') Rule 109; and Article XX, Rule 37 of the Chicago Stock Exchange (''CHX'') Rules. The relevant NYSE, Amex, and CHX pilot programs permit specialists to stop stock in minimum variation markets. *See also* Securities Exchange Act Release No. 34614 (Aug. 30, 1994), 59 FR 46280 (Sept. 7, 1994) (File No. SR–Phlx–93–41) (approving a Philadelphia Stock Exchange (''Phlx'') proposal to codify its procedures for stopping stock into Equity Floor Procedure Advice A–2, Stopping Orders).

[8] *See* Interpretation .50 of Section 38(d), Chapter II of BSE's Rules.

[9] The NYSE, Amex, and CHX pilot programs for stopping stock in minimum variation markets raise concerns with respect to bypassing of limit orders on the *opposite side of the market* from the stopped order and not of limit orders on the same side. The BSE's pilot program, however, raises concerns with respect to limit orders on both sides of the specialist's book because of the special provision in the BSE's pilot program regarding the execution of stopped orders at an improved price before the pre-existing limit orders. The NYSE, Amex, and CHX pilot programs have been extended until October 21, 1995, to allow the Commission to determine whether the benefits of the practice substantially outweigh the costs thereof for permanent approval purposes. For further discussion of the NYSE, Amex and CHX pilot programs and the Commission's rationale for extending them until October 21, 1995, *see* Securities Exchange Act Release Nos. 36009 (July 21, 1995), (File No. SR–NYSE–95–26); 36010 (July 21, 1995), (File No. SR–Amex–95–27); and 36011 (July 21, 1995) (File No. SR–CHX–95–17).

[10] *See supra,* note 2. Because the pilot programs on the NYSE, Amex, and CHX do not have a similar provision as the BSE regarding the execution of stopped orders before pre-existing limit orders and the BSE has limitations on its ability to surveil compliance with procedures when the stopped orders are executed before pre-existing limit orders, the BSE pilot program is only being extended for nine months.

[11] *See* 1994 Pilot Approval Order and March 1995 Pilot Approval Order, *supra,* note 1.

its findings on the above matters by November 17, 1995.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.

It Is Therefore Ordered, pursuant to Section 19(b)(2)[12] that the proposed rule change (SR–BSE–95–13) is hereby approved on a pilot basis until April 21, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–18601 Filed 7–27–95; 8:45 am]

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**[Release No. 34–36011; File No. SR–CHX–95–17]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to an Extension of the Pilot Program for Stopped Orders in Minimum Variation Markets

July 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on July 7, 1995, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot program for stopped orders in minimum variation markets for an additional three (3) month period.[1] The pilot program is set to expire on July 21, 1995.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to extend the pilot program implemented to establish a procedure regarding the execution of ''stopped'' market orders in minimum variation markets (usually an ⅛th spread market). In 1992, the Exchange adopted interpretation and policy .03 to Rule 37 of Article XX on a pilot basis to permit stopped market orders in minimum variation markets.[2] Prior to the pilot program, no Exchange rule required specialists to grant stops in minimum variation markets if an out-of-range execution would result.[3] While the Exchange has a policy regarding the execution of stopped market orders generally, the Exchange believes it is necessary to establish a separate policy for executing stopped market orders when there is a minimum variation market.

The Exchange's general policy regarding the execution of stopped orders is to execute them based on the next primary market sale. If this policy were used in a minimum variation market, it would cause the anomalous result of requiring the execution of all pre-existing orders even if those orders are not otherwise entitled to be filled.[4]

The Exchange's proposed policy would prevent unintended results by continuing a pilot program, established in 1992, for stopped market orders in minimum variation markets.[5] Specifically, the pilot program would require the execution of stopped market orders in minimum variation markets after a transaction takes place on the primary market at the stopped price or worse (higher for buy orders and lower for sell orders), or after the applicable Exchange share volume is exhausted. In no event will a stopped order be executed at a price inferior to the stopped price.[6] In the Exchange's view, the proposed policy will continue to benefit customers because they might receive a better price than the stop price, yet it also protects Exchange specialists by eliminating their exposure to executing potentially large amounts of pre-existing bids or offers when such executions would otherwise not be required under Exchange rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the

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[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1994).

[1] The Exchange originally received approval of the pilot program in Securities Exchange Act Release No. 30189 (Jan. 14, 1992), 57 FR 2621 (Jan. 22, 1992) (File No. SR–MSE–91–10) (''1992 Approval Order''). The Commission subsequently extended the Exchange's pilot program in Securities Exchange Act Release Nos. 31975 (Mar. 10, 1993), 58 FR 14230 (Mar. 16, 1993) (File No. SR–MSE–93–04) (''March 1993 Approval Order''); 32457 (June 11, 1993), 58 FR 33681 (June 18, 1993) (File No. SR–MSE–93–14) (''June 1993 Approval Order''); 33790 (Mar. 21, 1994), 59 FR 14434 (Mar. 28, 1994) (File No. SR–MSE–93–30) (''1994 Approval Order''); 35431 (Mar. 1, 1995, 60 FR 12796 (Mar. 8, 1995) (File No. SR–CHX–95–04) (''March 1995 Approval Order'').

[2] *See* 1992 Approval Order, *supra,* note 1.

[3] The term ''out-of-range'' means either higher or lower than the price range in which the security traded on the primary market during a particular trading day.

[4] For example, assume the market in ABC stock is 20–20⅛; 50 x 50 with ⅛th being out of range. A customer places an order with the Exchange specialist to buy 100 shares of ABC at the market and a stop is effected. The order is stopped at 20⅛ and the Exchange specialist includes the order in his quote by bidding the 100 shares at 20. If the next sale on the primary market is for 100 shares at 20, adopting the Exchange's existing general policy to minimum variation markets would require the specialist to execute the stopped market order at 20. However, because the stopped market order does not have time or price priority, its execution would trigger the requirement for the Exchange specialist to execute all pre-existing bids (in this case 5,000 shares) based on the Exchange's rules of priority and precedence. This is so even though the pre-existing bids were not otherwise entitled to be filled.

In the above example, Exchange Rule 37 (Article XX) requires the Exchange specialist to fill orders at the limit price only if such orders would have been filled had they been transmitted to the primary market. Therefore, the 100 share print at 20 in the primary market would cause at most 100 of the 5,000 share limit order to be filled on the Exchange. However, the Exchange's general policy regarding stopped orders, if applied to minimum variation markets, would require the 100 share stopped market order to be filled, and as a result, all pre-existing bids at the same price to be filled in accordance with Exchange Rule 16 (Article XX).

[5] *See* 1992 Approval Order, *supra,* note 1.

[6] Exchange Rule 28 (Article XX) states:

An agreement by a member or member organization to ''stop'' securities at a specified price shall constitute a guarantee of the purchase or sale by him or it of the securities at the price or its equivalent in the amount specified.

If an order is executed at a less favorable price than that agreed upon, the member or member organization which agreed to stop the securities shall be liable for an adjustment of the difference between the two prices.

Act in that it is designed to promote just and equitable principles of trade.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–95–17 and should be submitted by August 18, 1995.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with section 6(b)(5)[7] and Section 11(b)[8] of the Act. The Commission believes that proposed interpretation and policy .03 to Rule 37 should further the objectives of Section 6(b)(5) and Section 11(b) through pilot program procedures designed to allow stops, in minimum variation markets, under limited circumstances that offer primary market price protection for customers whose orders are granted stops, while still adhering to traditional auction market rules of priority and precedence.

In the orders approving the pilot procedures,[9] the Commission asked the CHX to study the effects of stopping stock in a minimum variation market. The Exchange has submitted to the Commission several monitoring reports regarding its pilot program. The Commission believes that the monitoring reports, especially the latest report, provide useful information regarding the effectiveness of the program during the pilot period. The Commission, however, finds that additional time is necessary to evaluate carefully and comprehensively the information provided by the Exchange and the CHX's use of its pilot procedures. Accordingly, the Commission believes that it is reasonable to extend the pilot program until October 21, 1995, to avoid compromising the benefit that investors might receive under Rule 37, as amended, while the Commission is deciding whether to grant permanent approval of the pilot program.[10]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission. No comments were received at that time.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CHX–95–17) is hereby approved on a pilot basis until October 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–18605 Filed 7–27–95; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78f (1988 & Supp. V 1993).

[8] 15 U.S.C. 78k (1988).

[9] *See supra*, note 1.

[10] *See* Securities Exchange Act Release No. 35910 (June 28, 1995), 60 FR 34563 (July 3, 1995) (notice of filing of proposed rule change relating to permanent approval of CHX's pilot program for stopping stock in minimum variation markets).

[11] 16 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1994).

**[Release No. 34–36015; File No. SR–NYSE–94–34]**

## Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Proposed Rule Change by New York Stock Exchange, Inc. Relating to Amendment of Exchange Rule 92

July 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 13, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

As originally filed,[1] the proposed rule change extended the applicability of Rule 29 to trades by a member or member organization on any market center and provided a limited exemption to permit member organizations to trade along with their customers when liquidating a block facilitation position. Amendment No. 1 to SR–NYSE–94–34 expanded the purpose section of the original filing.[2] This Amendment No. 2 to SR–NYSE–94–34 revises the proposed rule change to specifically exclude transactions in securities not listed on the NYSE, transactions by a member organization acting in the capacity of a specialist or market maker on a regional exchange, to the extent that a principal trade is effected and immediately liquidated at the same price to a customer on that exchange. An additional limited exemption also would allow a member or member organization to trade along with a customer when engaging in bona fide arbitrage or risk arbitrage provided certain conditions are met.[3]

The following is the text of the proposed rule change marked to reflect all of the proposed changes to the current rule. Additions to the current

[1] The filing was published for public comment in Securities Exchange Act Release No. 35139 (December 22, 1994), 60 FR 156 (January 3, 1995). The Commission published notice of an extension of the comment period in Securities Exchange Act Release No. 35274 (January 25, 1995), 60 FR 6330 (February 1, 1995).

[2] Amendment No. 1 was included in the original publication for public comment. *See* Securities Exchange Act Release No. 35139, *supra* note 1.

[3] 17 CFR 240.19c–3 (1994).

rule are in italics and deletions are in brackets.

Rule 92: Limitations on Members' Trading Because of Customers' Orders

[(a) No member shall (1) personally buy or initiate the purchase of any security on the Exchange for his own account or for any account in which he, his member organization or any other member, allied member or approved person, in such organization or officer thereof, is directly or indirectly interested, while such member personally holds or has knowledge that his member organization holds an unexecuted market order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account, while he personally holds or has knowledge that his member organization holds an unexecuted market order to sell such security in the unit of trading for a customer.

(b) No member shall (1) personally buy or initiate the purchase of any security in the Exchange for any such account, at or below the price at which he personally holds or has knowledge that his member organization holds an unexecuted limited price order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account at or above the price at which he personally holds or has knowledge that his member organization holds an unexecuted limited price order to sell such security in the unit of trading for customer.]

*(a) Except as provided in this Rule, no member or member organization shall cause the entry of an order to buy (sell) any Exchange-listed security on the Exchange or any other market center for any account in which such member or member organization or any approved person thereof is directly or indirectly interested (a ''proprietary order''), if the person responsible for the entry of such order has knowledge of any particular unexecuted customer's order to buy (sell) such security which could be executed at the same price.*

*(b) A member or member organization may enter a proprietary order while representing a customer order which could be executed at the same price, provided the customer's order is not for the account of an individual investor, and the customer has given express permission, including an understanding of the relative price and size of allocated execution reports, under the following conditions:*

*(1) the member or member organization is liquidating a position held in a proprietary facilitation account, and the customer's order is for 10,000 shares or more; or*

*(2) the member or member organization is engaging in bona fide arbitrage or risk arbitrage transactions, and recording such transactions in an account used solely to record arbitrage transactions (an ''arbitrage account'').*

(c) The provisions of this Rule shall not apply *to:*

(1) [to] any purchase or sale of any security in an amount of less than the unit of trading made by an odd-lot dealer to offset odd-lot orders for customers; [or]

(2) [to] any purchase or sale of any security upon terms for delivery other than those specified in such unexecuted market or limited price order [.];

*(3) transactions by a member or member organization acting in the capacity of a market maker pursuant to Regulation 240.19c–3 of the Securities and Exchange Commission in a security listed on the Exchange; and*

*(4) transactions by a member or member organization acting in the capacity of a specialist or market maker on another national securities exchange, to the extent that a riskless principal trade is effected and immediately liquidated at the same price to a customer on that exchange.*

Supplementary Material

*.10 A member or employee of a member or member organization responsible for entering proprietary orders shall be presumed to have knowledge of a particular customer order unless the member organization has implemented a reasonable system of internal policies and procedures to prevent the misuse of information about customer orders by those responsible for entering such proprietary orders.*

*.20 This Rule shall also apply to a member organization's member on the Floor, who may not execute a proprietary order at the same price, or at a better price, as an unexecuted customer order that he or she is representing, except to the extent the member organization itself could do so under this Rule.*

*.30 For purposes of paragraph (b) above, the term ''account of an individual investor'' shall have the same meaning as the meaning ascribed to that term in Exchange Rule 80A. For purposes of paragraph (b)(1) above, the term ''proprietary facilitation account'' shall mean an account in which a member organization has a director interest and which is used to record transactions whereby the member organization acquires positions in the course of facilitating customer orders. Only those positions which are recorded in a proprietary facilitation account may be liquidated as provided in paragraph (b)(1). For purposes of paragraph (b)(2) above, the terms ''bona fide arbitrage'' and ''risk arbitrage' shall have the meaning ascribed to such terms in Securities Exchange Act Release 15533, January 26, 1979. All transactions effected pursuant to paragraph (b)(2) above must be recorded in an arbitrage account.*

[.10] *.40* A member who issues a commitment or obligation to trade from the Exchange through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or sale of a security on the Exchange as referred to in this Rule.

[.20] *.50* See paragraph (c)(i) of Rule 800 (Basket Trading: Applicability and Definitions) and paragraph 99 (Off-Hours Trading: Applicability and Definitions) in respect of the ability to initiate basket transactions and transactions through the ''off-Hours Trading Facility'' (as Rule 900 defines that term), respectively, notwithstanding the limitations of this Rule.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose [4]

Currently, Exchange Rule 92 provides that members may not trade for their own accounts at a price at which they hold executable customer orders. The Rule, by its express terms, does not apply to member organizations or to transactions by members and member organizations in market centers other than the exchange. The rule does not

[4] This discussion consolidates the ''Purpose'' discussion as submitted in SR–NYSE–94–34 and Amendment No. 1 thereto, *see supra* note 1, and also discusses additional amendments to Rule 92 being filed herein.

contain any exceptions for any types of proprietary transactions, including transactions where a member firm trades for its own account along with a customer's block-size order when liquidating a proprietary block facilitation position, or transactions involving bona fide arbitrage and risk arbitrage, even if the customer has given permission for the firm to trade along with the order.

The proposed amendments to Rule 92 make clear that the Rule applies only to transactions in NYSE-listed securities and extend the Rule's applicability to member organizations, and to transactions by members and member organizations in market centers other than the Exchange. The proposed amendments contain exemptions for liquidations of block facilitation transactions and for bona fide arbitrage and risk arbitrage, as discussed below. The proposed amendments also provide exemptions, as discussed below, for member organizations acting as market makers pursuant to Rule 19c–3 under the Act, or as regional stock exchange specialists or market makers. In addition, the proposed amendments provide an exemption for member organization proprietary transactions where the member organization has implemented information barrier procedures as discussed below.

*Applicability of Rule 92 to Member Organizations*

The proposed amendments to Rule 92 would broaden the Rule's applicability to all proprietary trading in NYSE-listed stocks when a member organization has an agency order capable of execution at the price at which a proprietary trade is effected. The Exchange understands that in most ''trading along'' situations, the same Floor Broker represents the agency and proprietary orders and, even if that was not the case, it would be unacceptable for a firm to enter a proprietary order with a different broker, who could then compete directly with the broker representing the member firm's customer. To better deal with the current trading environment and still meet the high standard of ethical conduct the Exchange expects of its membership when dealing with their customers, the focus of Rule 92 should be placed on the member organization itself. Rule 92 was drafted and promulgated prior to the advent of block positioning and the proliferation of upstairs proprietary position trading by member organizations, but the Rule reflects fundamental concepts, rooted in agency law, that an agent must place a customer's interest ahead of the agent's proprietary interest. The Exchange and its constituent committees that reviewed the proposed amendments to the Rule believe it is appropriate to extend this emphasis on the priority of customer interest to the member organization itself, as well as to the organization's Floor members. While enforcement action has been taken regarding inappropriate proprietary trading vis-á-vis agency orders as violative of the NYSE Rule 476 prohibition against conduct inconsistent with just and equitable principles of trade, recent investigations drew the Exchange's attention to a practice of trading along with, but not ahead of, institutional customer orders with the consent of the consumer. When appropriate, the Exchange will continue to bring enforcement action for violations of Rule 476 in the context of inappropriate proprietary trading. The Exchange also believes that amending Rule 92 offers the best approach to addressing expectations on the subject of member organization proprietary trading in the context of block facilitation. The proposed amendments change the scope and focus of Rule 92 and strike an appropriate balance between block facilitation and customer protection.

*Applicability of Rule 92 to Transactions by Members and Member Organizations in Market Centers other than the Exchange*

The proposed amendments to Rule 92 extend the application of the Rule to transactions by a member or member organization in a market center other than the Exchange. The Exchange believes it is appropriate that the broad concepts of agency law and fiduciary duty codified in paragraph (a) of Rule 92 be made applicable to all agency representation, irrespective of market center. The exceptions provided in paragraphs (b) and (c) are intended to apply to transactions by members and member organizations on the Exchange. Other market centers may choose to adopt, or not adopt, comparable exceptions. The Exchange, as well as other self-regulatory organizations, has a long history of regulating activities involving, for example, sales practices and the trading of a diverse range of financial products which occur in other market centers. Many of these regulatory activities are conducted through the Intermarket Surveillance Group.

*Liquidation of Facilitation Positions*

The ability to liquidate a block facilitation position by trading along with a customer's block-size order is generally perceived by positioning firms and their institutional customers as a reasonable aspect of the block facilitation business, provided there is disclosure to customers and customer consent. The inability to liquidate such positions in these circumstances may impede the block facilitation business, as firms may be reluctant to assume block facilitation positions if they cannot liquidate them, subject to appropriate safeguards, while representing customer orders.

The Exchange is proposing to amend Rule 92 to permit member organizations to trade along with a customer, when liquidating a block facilitation position, subject to the following conditions:

- The customer is not an individual investor,[5]
- The customer's order is for 10,000 shares or more;
- The customer has given express permission for the member organization to trade along with the order, including an understanding of the relative price and size of allocated execution reports;
- The member organization is liquidating a position acquired in the course of facilitating a block transaction; and
- The member organization's orders are for an account used to record transactions whereby the member organization acquires positions in the course of facilitating customer orders of 10,000 shares or more (a ''proprietary facilitation account'').

The Exchange intends to inform members and member organizations that, although the amended rule does not outline a specific method of record keeping evidencing that a customer has given permission to trade along, the burden of proof to demonstrate that customer consent was obtained will fall on the member or member organization.

*Bona Fide Arbitrage and Risk Arbitrage Transactions*

The Exchange believes it would be appropriate for members and member organizations to be able to trade along with customers in bona fide arbitrage and risk arbitrage transactions, subject to the following conditions:

- The customer is not an individual investor;
- The customer has given express permission for the member organization to trade along with the order, including an understanding of the relative price and size of allocated execution reports; and
- The member organization's transactions are recorded in an account

[5] The Exchange believes that consent to trade along should be given by a market professional and therefore is limiting these exemptions to orders which are not for the account of an individual investor.

used solely to record arbitrage transactions (an ''arbitrage account'').

As with the exception for liquidation of block facilitation positions, the burden of proof to demonstrate that customer consent was obtained would fall on the member or member organization. The terms ''bona fide arbitrage'' and ''risk arbitrage'' would have the meaning ascribed to them in Securities Exchange Act Release No. 15533.[6]

*Exception for Market Makers*

The Exchange's proposal would exempt from Rule 92 transactions by a member organization acting in the capacity of a market maker pursuant to Rule 19c–3 under the Act,[7] and transactions by a regional exchange specialist or market maker, to the extent that a riskless principal trade is effected and immediately liquidated at the same price to a customer on that exchange.

*Information Barriers*

The amendments to Rule 92 provide that a member or employee of a member organization responsible for entering proprietary orders shall be presumed to have knowledge of a particular customer order unless the member organization has implemented a reasonable system of internal policies and procedures to prevent the misuse of information about customer orders by those responsible for entering such proprietary orders. Each member organization would have the flexibility to implement such procedures as it deemed appropriate to its own business operations.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed rule change will enable member organizations to add depth and liquidity to the Exchange's market, while continuing to provide customer protection through the requirement of customer approval for trading along situations.

[6] Securities Exchange Act Release No. 15533 (January 26, 1979).

[7] Rule 19c–3 under the Act provides that the rules of national securities exchanges may not impose off-board trading restrictions on securities listed after April 26, 1979.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

As the proposed amendments to Rule 92 would apply equally to all market centers with respect to trading by NYSE members and member organizations, the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange understands that the Commission has received comments on SR–NYSE–94–34 and Amendment No. 1 thereto from several self-regulatory organizations and member organizations. The Exchange believes that issues raised by these commentators are addressed herein, and in a letter from James E. Buck, Senior Vice President and Secretary of the Exchange, to Brandon Becker, Director of the Division of Market Regulation, dated March 15, 1995.[8]

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–34 and should be submitted by August 18, 1995.

[8] This letter and all other comment letters received by the Commission regarding the NYSE's proposal are available in the Commission's public reference room in File No. SR–NYSE–94–34.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–18602 Filed 7–27–95; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–36009; File No. SR–NYSE–95–26]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to an Extension of Its Pilot Program for Stopping Stock Under Amendments to Rule 116.30

July 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on July 19, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a request to extend amendments to Rule 116.30, with respect to the ability of specialists to stop stock in minimum variation markets for three months until October 21, 1995.[1] The text of the

[1] The NYSE received approval to amend Rule 116.30, on a pilot basis, in Securities Exchange Act Release No. 28999 (Mar. 21, 1991), 56 FR 12964 (Mar. 28, 1991) (File No. SR–NYSE–90–48) (''1991 Approval Order''). The Commission subsequently extended the NYSE's pilot program in Securities Exchange Act Release Nos. 30482 (Mar. 16, 1992), 57 FR 10198 (Mar. 24, 1992) (File No. SR–NYSE–92–02) ('' 1992 Approval Order''); 32031 (Mar. 22,

proposed rule change is available at the Office of the Secretary, NYSE, and the Commission.

## II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to extend the effectiveness of amendments to Exchange Rule 116.30 that permit a specialist to grant a stop in a minimum variation market. The practice of ''stopping'' stock by specialists on the Exchange refers to a guarantee by the specialist that an order the specialist receives will be executed at no worse a price than the contra-side price in the market when the specialist receives the order, with the understanding that the order may in fact receive a better price.

Formerly, Exchange Rule 116.30 permitted a specialist to stop stock only when the quotation spread was at least twice the minimum variation (*i.e.*, for most stocks ¼ point), with the specialist then being required to narrow the quotation spread by making a bid or offer, as appropriate, on behalf of the order that is being stopped.

For three years, on March 21, 1991, March 16, 1992, and March 22, 1993, the Commission approved, on a one-year pilot basis each time, amendments to the rule that permit a specialist to stop stock in a minimum variation market (generally referred to as an ⅛-point market).[2] The Exchange sought these amendments on the grounds that many orders would receive an improved price if stopping stock in ⅛ point markets were permitted. The amendments to Rule 116.30 permit a specialist, upon request, to stop individual orders of 2,000 shares or less, up to an aggregate of 5,000 shares of multiple orders, in an ⅛ point market.[3] A specialist may stop an order of a specified larger order size threshold, or a larger aggregate number of shares, after obtaining Floor Official approval.

In the Commission's 1994 Approval Order, which extended the pilot until March 21, 1995, the Commission asked the Exchange to submit a fourth monitoring report on the stopping stock pilot.[4] Subsequently, the Commission approved an extension of the pilot until July 21, 1995, so that the Commission would have additional time to evaluate the new information provided in the fourth monitoring report and to ensure that Rule 116.30, as amended, does not harm public customers with limit orders on the specialist's book.[5]

In connection with the proposed rule change, the Exchange has submitted four monitoring reports to the Commission, which review the operation of the pilot. The Exchange believes that the results obtained by its monitoring effort during the pilot period show that the amendments to Rule 116.30 enable specialists to better serve investors through the ability to offer price improvement to stopped orders, while having relatively little adverse impact on other orders on the book.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The amendments to Rule 116.30 are consistent with these objectives in that they permit the Exchange to better serve its customers by enabling specialists to execute customer orders at improved prices.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.[6]

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–95–26 and should be submitted by August 18, 1995.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular with Section

1993), 58 FR 16563 (Mar. 29, 1993) (File No. SR–NYSE–93–18) (''1993 Approval Order''); 33792 (Mar. 21, 1994), 59 FR 14437 (Mar. 28, 1994) (File No. SR–NYSE–94–06) ''1994 Approval Order''); and 35309 (Jan. 31, 1995) 60 FR 7247 (Feb. 7, 1995) (File No. SR–NYSE–95–02) (''January 1995 Approval Order'').

[2] *See* 1991, 1992, and 1993 Approval Orders, *supra*, note 1.

[3] The NYSE has stated, both to the Commission and to its members that specialists should only stop stock in a minimum variation market when an imbalance exists on the opposite side of the market and such imbalance is of sufficient size to suggest the likelihood of price improvement. *See, e.g.*, letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Mary N. Revell, Branch Chief, Division of Market Regulation, SEC, dated December 27, 1990; NYSE information memo #1809, dated September 12, 1991.

[4] *See* 1994 Approval Order, *supra*, note 1.

[5] *See* January 1995 Approval Order, *supra*, note 1.

[6] The Commission has received a comment letter regarding permanent approval of the NYSE's procedures for stopping stock in minimum variation markets. *See* letter from Junius W. Peake, Monfort Professor of Finance, University of Northern Colorado, to Secretary, SEC, dated March 1, 1995. The Commission believes that it would be more appropriate to address the issues raised by the comment letter in the context of the Exchange's proposal requesting permanent approval of its stopping stock pilot program. *See* Securities Exchange Act Release No. 35908 (June 28, 1995), 60 FR 34564 (July 3, 1995) (notice of filing of proposed rule change relating to permanent approval of NYSE's pilot program for stopping stock in a minimum variation market).

6(b)(5)[7] and Section 11(b)[8] of the Act. The Commission believes that the amendments to Rule 116.30 should further the objectives of Section 6(b)(5) and Section 11(b) through pilot program procedures designed to allow stops, in minimum variation markets, under limited circumstances that provide the possibility of price improvement to customers whose orders are granted stops.

In the orders approving the pilot procedures,[9] the Commission asked the Exchange to study the effects of stopping stock in a minimum variation market. The Exchange has submitted to the Commission several monitoring reports regarding the amendments to Rule 116.30. The Commission believes that the monitoring reports, especially the latest report, provide useful information regarding the effectiveness of the program during the pilot period. The Commission, however, finds that additional time is necessary to evaluate carefully and comprehensively the information provided by the Exchange and the NYSE's use of its pilot procedures. Accordingly, the Commission believes that it is reasonable to extend the pilot program until October 21, 1995, to avoid compromising the benefit that investors might receive under Rule 116.30, as amended, while the Commission is considering whether to permanently approve the pilot program.[10]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSE–95–26) is hereby approved on a pilot basis until October 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–18604 Filed 7–27–95; 8:45 am]

BILLING CODE 8010–01–M

**[Release No. 34–36003; File No. SR–OCC–95–07]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Concerning Equity TIMS

July 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934[1] (''Act''), notice is hereby given that on May 26, 1995, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change through May 31, 1996.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to have the Commission extend its order granting temporary approval of OCC's use of its Theoretical Intermarket Margin System (''TIMS'') for calculating clearing margin positions in equity options.[2]

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

On March 1, 1991, the Commission temporarily approved a proposed rule change which authorized OCC to use TIMS to calculate clearing member margin requirements on equity options.[4] Since its initial temporary approval of Equity TIMS, the Commission has extended the temporary approval three times.[5]

Equity TIMS utilizes options price theory (*i.e.*, an option pricing model) to project the cost of liquidating in the event of a ''worst case'' theoretical change in the price of the underlying securities, each clearing member's short equity option positions and long equity option positions on which OCC is entitled to assert a lien. This projected liquidation cost is then used by Equity TIMS to calculate for each clearing member a margin requirement to cover that cost.

OCC has requested an additional extension so that it can complete its analysis of Equity TIMS. Specifically, in its discussions with the Commission's staff preceding the Commission's initial temporary approval of Equity TIMS, OCC represented that it would undertake to analyze the effects of including equity option volatilities over longer periods in determining margin intervals and would report the results of its analysis to the Commission.[6] OCC recently submitted a report of its analysis to the Commission's staff. Accordingly, OCC seeks an extension of the Commission's temporary approval of

[7] U.S.C. 78f (1988 & Supp. V 1993).

[8] 15 U.S.C. 78k (1988).

[9] *See supra,* note 1.

[10] *See* Securities Exchange Act Release No. 35908 (June 28, 1995), 60 FR 34564 (July 3, 1995) (notice of filing of proposed rule change relating to permanent approval of NYSE's pilot program for stopping stock in a minimum variation market).

[11] 15 U.S.C. § 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Equity TIMS is a modified version of OCC's Non-Equity TIMS, which is OCC's margin system used to calculate requirements on options for which the underlying asset is anything but an equity security. Securities Exchange Act Release No. 23167 (April 22, 1986), 51 FR 16127 [File No. SR–OCC–85–21] (order approving Non-Equity TIMS).

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] After the Commission's approval of File No. SR–OCC–89–12 on March 1, 1991, OCC phased out its previous margin system, which was known as the ''production system,'' and since then has used Equity TIMS to calculate its clearing members' margin requirements on equity option positions. For a complete description of Equity TIMS, refer to Securities Exchange Act Release No. 28928 (March 1, 1991), 56 FR 9995 [File No. SR–OCC–89–12] (order approving the use of Equity TIMS to calculate margin on equity options on a temporary basis through May 31, 1992).

[5] Securities Exchange Act Release Nos. 30761 (May 29, 1992), 57 FR 24286 [File No. SR–OCC–92–15] (order extending the approval of Equity TIMS through May 31, 1993); 32388 (May 28, 1993), 58 FR 31989 [File No. SR–OCC–93–06] (order extending the approval of Equity TIMS through May 31, 1994); and 34065 (May 13, 1994), 59 FR 26534 [File No. SR–OCC–94–03] (order extending the approval of Equity TIMS through May 31, 1995).

[6] OCC initially was delayed because it expanded the scope of its analysis from ten years to thirty years and had difficulty in obtaining an accurate data base of information covering the expanded period of review. OCC also determined that its analysis of equity options volatility would benefit from a review by an outside consultant, and because it took OCC some time to obtain the services of an appropriate consultant, its analysis was delayed further.

Equity TIMS through May 31, 1996, so that the Commission may review and discuss the report and several potential changes to Equity TIMS with OCC.[7]

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will enhance OCC's ability to safeguard the securities and funds in its custody or control or for which it responsible.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments have been solicited or received. OCC will notify the Commission of any written comments received by OCC.

*III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action*

Section 17A(b)(3)(F)[8] of the Act requires the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. Additionally, Section 17A(a)(1) of the Act[9] encourages the use of efficient, effective, and safe procedures for securities clearance and settlement. The Commission continues to believe that OCC's proposal to utilize Equity TIMS meets the requirements of the Act and that it represents an improvement over OCC's previous margin system in several respects.[10] Nevertheless, while the Commission continues to believe that the margin methodology employed by Equity TIMS is basically sound, the Commission staff must fully analyze OCC's report to the Commission and several potential changes to Equity TIMS before determining whether to grant permanent approval for Equity TIMS.

OCC has requested that the Commission find good cause for approving the proposal prior to the thirtieth day after the publication of notice of filing of the proposed rule change. The Commission finds such good cause because the Commission believes that OCC's use of Equity TIMS over the past five years has resulted in better assessments of OCC's risk exposure associated with the clearance and settlement of its clearing members' equity option positions and has resulted in calculations of clearing margin that more accurately reflect that risk exposure. Accordingly, to allow OCC to continue to use Equity TIMS while the Commission and OCC further examine Equity TIMS, the Commission finds that good cause exists for approving the proposed rule change prior to the thirtieth day after publication of notice of filing. The Commission also notes that during the four previous temporary approval periods, OCC has not received any adverse comments regarding Equity TIMS from its clearing members.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–95–07 and should be submitted by August 18, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[11] that the proposed rule change (File No. SR–OCC–95–07) be, and hereby is, approved through May 31, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–18606 Filed 7–27–95; 8:45 am]

BILLING CODE 8010–01–M

[7] OCC has not filed a proposed rule change regarding the potential changes to Equity TIMS; however, OCC will file a draft proposed rule change so that the Commission will have an opportunity to comment on the changes before OCC officially seeks approval of the changes under Section 19(b)(2) of the Act.

[8] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[9] 15 U.S.C. 78q–1(a)(1) (1988).

[10] *Supra* note 4.

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1994).

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**[Release No. 35–26337]**

## Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

July 21, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 14, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

### Consolidated Natural Gas Company, et al. (70–8577)

Consolidated Natural Gas Company (''CNG''), a registered holding company, located at CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199, and its wholly-owned subsidiary company, CNG Energy Services Corporation (''Energy Services''), located at One Park Ridge Center, Pittsburgh, Pennsylvania 15244–0746, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 43, 45 and 54 thereunder.

CNG and Energy Services request authorization to form a new subsidiary, CNG Special Products and Services, Inc., (''CSPS''), to engage in the business

of providing certain energy-related services (''Customer Services'')[1] to customers of CNG's local distribution companies (''LDCs'') and to others, primarily customers of utilities not affiliated with CNG. Applicants also request authorization, through December 31, 2000, for CNG to lend Energy Services an aggregate of up to $10 million on a revolving basis and for Energy Services, in turn, to provide CSPS with ''mirror image'' financing reflecting the same source and combination of funds as utilized between CNG and Energy Services.

Energy Services proposes to obtain the funds to lend to CSPS by some combination of (1) selling shares of its common stock, $1.00 par value, to CNG, (2) obtaining open account advances from CNG, or (3) obtaining long-term loans from CNG. Open account advances from CNG to Energy Services would be made under a letter agreement with Energy Services and would be repaid on or before a date not more than one year from the date of the first advance with interest at the same effective rate of interest as CNG's weighted average effective rate for commercial paper and revolving credit borrowings. If no such borrowings are outstanding, the interest rate would be predicated on the Federal Fund's effective rate of interest as quoted daily by the Federal Reserve Bank of New York. Long-term loans to Energy Services would be evidenced by long-term non-negotiable notes of Energy Services (documented by book entry only) maturing over a period of time (not in excess of 30 years) to be determined by the officers of CNG, with the interest predicated on and substantially equal to CNG's cost of funds for comparable borrowings by the parent. In the event CNG has not had recent comparable borrowings, the rate would be tied to the Salomon Brothers indicative rate for comparable debt issuances published in Salomon Brothers, Inc. Bond Market Roundup or similar publication on the date nearest to the time of takedown. All loans would be prepayable at any time without premium or penalty.

CNG will obtain the funds it loans to Energy Services through internal cash generation, issuance of long-term debt securities, as authorized by Commission order dated March 6, 1995 (HCAR No. 26245), borrowings under credit agreements, as authorized by Commission order dated June 29, 1995 (HCAR No. 26321), or through other authorizations approved or to be approved by the Commission.

Applicants expect CSPS to conduct its Customer Services business both within and outside of the four states of Virginia, West Virginia, Pennsylvania and Ohio where CNG's LDCs are located (collectively, ''LDC States''). However, applicants state that during the twelve-month period beginning on the first day of January in the year following the date CSPS commences its Customer Services business pursuant to a Commission order issued in this matter, and for each subsequent calendar year thereafter, total revenues of CSPS derived from customers in the LDC States will exceed total revenues of CSPS derived from customers in all other states.

Applicants state that CNG's LDSs will assist CSPS with customer billing, accounting, and other energy-related services and anticipate that these services can be provided to CSPS by the current staff at the LDSs. They state that all services required to conduct the Customer Services business that are provided to CSPS by the LDCs or any other CNG system company will be billed in accordance with section 13(b) of the Act and rules 87, 90 and 91 thereunder.

**National Fuel Gas Company, et al. 70–8649**

National Fuel Gas Company (''National''), a registered holding company, and Horizon Energy Development, Inc. (''Horizon'') (collectively, ''Applicants''), a to-be-acquired wholly-owned subsidiary company of National, both located at 10 Lafayette Square, Buffalo, New York 14203, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 13(b), 32 and 33 of the Act and rules 43, 45, 53 and 83 thereunder.

National proposes to acquire, for a purchase price of $500,000 all of the issued and outstanding common stock of Horizon, a newly formed New York corporation. National proposes to capitalize Horizon by providing debt and equity capital not to exceed $150 million at any time outstanding through December 31, 2001. Horizon proposes to invest up to $150 million at any time outstanding through December 31, 2001 in a combination of debt, equity, guarantees, and the assumption of liabilities (''Investment Limit'') in authorized project activities (''Project Activities'').

National proposes to invest in Horizon in the form of acquisitions of capital stock, capital contributions, open account advances and/or loans (collectively, ''Investments''). Aggregate Investments shall not exceed $150 million at any time outstanding. Any loans by National to Horizon having maturities of less than nine months shall have terms and conditions parallel to those of similar loans obtained by National. The interest rates on such loans shall not exceed the current LIBOR rates plus 200 basis points. Any loans by National to Horizon having maturities of more than nine months shall have terms and conditions parallel to those of similar loans obtained by National, the proceeds of which shall not exceed the current yields of Treasuries having similar maturities plus 200 basis points.

The proposed Project Activities include development activities concerning investments in, and financing the acquisitions of, one or more companies (''Intermediate Companies'') engaged directly or indirectly and exclusively in the business of holding the securities of one or more exempt wholesale generators, (''EWGs''), and foreign utility companies (''FUCOs''), (collectively, ''Exempt Projects''). Project Activities also include consulting services and development activities throughout the United States regarding qualifying cogeneration and small power production facilities as defined in the Public Utility Regulatory Policies Act of 1978, and independent power production facilities, (collectively, ''Domestic Power Projects.'')

Horizon proposes to undertake preliminary development and administrative activities in regard to Domestic Power Projects. Preliminary development activities would include investigating sites, preliminary engineering and licensing activities,

[1] The Customer Services offered by CSPS would include the following: (1) ''Service Line Maintenance Program'' (repair of service lines owned by and located on customers' property, in exchange for a nominal monthly fee); (2) ''Appliance Guard'' (an extended service warranty covering the cost of repairing customers' appliances); (3) ''Payment Power'' (bill payment protection, up to $400 a month for six months); (4) ''Routine Furnace Services'' (routine furnace inspection and repair); (5) ''One-Package Appliance Inspection and Replacement'' (annual inspection, maintenance or replacement of any appliance, including hot water heaters); (6) ''Community Bill Payment Center'' (a centralized bill payment center for ''one stop'' payment of all utility and municipal bills); (7) ''Energy Audits and Services'' (energy audits for institutional customers together with a turnkey service package); (8) ''Propane Services'' (in areas where it is not economical for local distribution companies to extend natural gas service via underground pipelines); (9) ''Gas Fired Electric Generators'' (installation of temporary or permanent gas-fired turbines for on-site generation and consumption of electricity); and (10) ''Pipeline Maintenance, Construction and Managerial Support Services for Others'' (management of construction of and required maintenance on pipelines owned by other utilities and provision of consulting services to small non-affiliated utilities). Applicants state that this is not an exhaustive list of Customer Services and propose to offer other services of a similar nature without additional Commission authorization unless additional funding for CSPS is necessary.

acquiring options and rights, contract drafting and negotiating, preparing proposals and other necessary activities to identify and analyze feasible investment opportunities and to initiate the commercialization of a project. Administrative activities include ongoing personnel, accounting, engineering, legal, financial and other support activities necessary for Horizon to manage its development activities and investments in Domestic Power Projects.

Applicants proposed to acquire interests in, finance the acquisition of, and hold the securities of, one or more Intermediate Companies, without filing specific project applications or declarations, within the limitations set forth herein. Applicants request authority for Intermediate Companies to issue and acquire equity and debt securities, with or without recourse to the Applicants, to or from persons other than the Applicants including banks, insurance companies, and other financial institutions (''IC Debt Financing''), for the purpose of financing (including any refinancing of) investments in Exempt Projects.

The Intermediate Companies' investments in Exempt Projects may take the form of the issuance or acquisition of common stock, capital contributions, open account advances, other loans, or the borrowing of funds. Securities issued or acquired by Intermediate Companies may be issued or acquired in one or more transactions from time to time through December 31, 2001. Applicants propose that debt securities issued to persons other than the Applicants, or acquired by Intermediate Companies, may include secured and unsecured promissory notes, and other evidence of recourse and nonrecourse indebtedness.

Securities issued or acquired by Intermediate Companies may be denominated in either U.S. dollars or foreign currencies. The Applicant state that the amount and type of such securities, and the terms thereof, including (in the case of any indebtedness) interest rate, maturity, prepayment or redemption privileges, and the forms of any collateral security granted with respect thereto, would be negotiated on a case by case basis, taking into account differences from project to project in desirable debt-equity ratios, projections of earnings and cash flow, depreciation lives, and other similar financial and performance characteristics. Accordingly, the Applicants propose that they have the flexibility to negotiate the terms and conditions of such securities without further approval by the Commission.

Applicants also request authority to issue guarantees and assume liabilities for development activities in connection with the proposed Exempt Projects and Intermediate Companies up to the proposed Investment Limit. The Applicants further propose to obtain recourse and norecourse debt financing, from unaffiliated third parties to finance investments in Project Activities (''Debt Financing''). All outstanding Debt Financing, including IC Debt Financing, guaranteed by National, or having some other form of recourse to National (''Recourse Debt''), shall not, when aggregated with all other Investments, guarantees and assumed liabilities relating to Project Activities, exceed the Investment Limit at any time. National may charge a commercially reasonable rate for the provisions of such guarantees. Debt Financing not having recourse to National (''Nonrecourse Debt''), shall not constitute part of the proposed Investment Limit.

The term of any Recourse Debt will not exceed 40 years and its interest rate will not exceed 200 basis points over comparable U.S. Treasury securities in effect on the date of issue. The term of any Nonrecourse Debt will not exceed 40 years, and its interest rate (if payable in U.S. dollars) will not exceed 600 basis points over comparable U.S. Treasury securities in effect on the date of issue. If any Recourse Debt or Nonrecourse Debt is denominated in foreign currencies, the terms and interest rate will be commercially reasonable at the time of borrowing. Applicants or the Intermediate Companies may also pay commercially reasonable commitment and other fees with respect to Debt Financing.

Notwithstanding the foregoing, the Applicants state that no equity security having a stated par value would be issued or sold by an Intermediate Company for a consideration that is less than such par value; and that any note, bond or other evidence of indebtedness issued or sold by any Intermediate Company will mature not later than 40 years from the date of issuance thereof, and will bear interest at a rate not to exceed the following: (1) If such note, bond or other indebtedness is U.S. dollar denominated, at a fixed rate not to exceed 6.0% over the yield to maturity on an actively traded, non-callable, U.S. Treasury note having a maturity equal to the average life of such note, bond or other indebtedness, or at a floating rate not to exceed 6.0% over LIBOR from time to time; and (2) if such note, bond or other indebtedness is denominated in the currency of a country other than the United States, the terms and interest rate will be commercially reasonable at the time of borrowing.

Horizon also proposes to participate directly or through Intermediate Companies in joint ventures with non-associates which joint ventures are exclusively in the business of researching investment opportunities in, and owning and developing, Exempt Projects. Horizon further requests authorization to acquire interests in Intermediate Companies prior to such Intermediate Companies acquiring their interests in Exempt Projects, provided that such Intermediate Companies engage and will engage exclusively in the business of investing in Exempt Projects.

Applicants request an exemption from section 13(b) under rule 83 of the Act, for any subsidiary company of National providing services to EWGs which derive no part of their income, directly or indirectly, from the generation of electric energy for sale within the United States, or FUCOs.

**Entergy Corporation, et al. 70–8653**

Entergy Corporation (''Entergy''), a registered holding company, and its wholly owned subsidiary companies, New Orleans Public Service Inc., Louisiana Power & Light Company, located at 639 Loyola Avenue, New Orleans, Louisiana 70113; Arkansas Power & Light Company, 425 West Capitol Avenue, Little Rock, Arkansas 72201; Gulf States Utilities Company, 350 Pine Street, Beaumont, Texas 77701; Mississippi Power & Light Company, 308 Pearl Street, Jackson, Mississippi 39215 (collectively, ''System Operating Companies''); System Energy Resources, Inc. (''SERI''), 1340 Echelon Parkway, Jackson, Mississippi 39213; Entergy Services, Inc. (''ESI''), 639 Loyola Avenue, New Orleans, Louisiana 70113; Entergy Enterprises, Inc. (''EEI''), 900 South Shackleford Road, Little Rock, Arkansas 72211; and Entergy Systems and Service, Inc. (''SASI''), 4740 Shelby Drive, Suite 105, Memphis, Tennessee 38118, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), and 13(b) of the Act and rules 43, 45, 54, 87, 90 and 91 thereunder.

Entergy proposes to organize a new subsidiary to be called Entergy Technologies Company (''ETC'') and to provide funding to ETC, through December 31, 1998, up to an aggregate principal amount of $100 million. Entergy proposes to incorporate ETC under Delaware law as a direct wholly owned subsidiary of EEI, with an authorized capital of up to 1,000 shares of common stock with a par value of $.01 per share. EEI would subscribe to

and purchase all of ETC's common stock for a price of $1,000 per share, using funds contributed or loaned to EEI by Entergy. EEI would provide ETC with additional funding, through December 31, 1998, in the form of capital contributions, open account advances, or loans, or combination thereof, in an aggregate amount not to exceed $100 million. Entergy proposes to provide funding to EEI for reinvestment in ETC out of Entergy's internally generated cash and other available cash resources. Loans from Entergy to EEI and from EEI to ETC will bear interest at a rate per annum not in excess of the prime commercial lending rate announced from time to time by a money center bank designated by Entergy plus 3%, and will have a final maturity not to exceed 20 years from the loan origination date.

In addition, ETC seeks authority to incur borrowings from external sources in an aggregate amount not to exceed $100 million at any one time outstanding. Such borrowings would be evidenced by notes issued by ETC, would have final maturities not to exceed 20 years from their date of issuance, and would bear interest at rates not to exceed the greater of: (1) The prime rate as described above plus 5% per annum; or (2) 14% per annum. EEI and/or Entergy propose to guarantee such loans.

ETC would use the proceeds of such investments by EEI and external borrowings to make payments to the System Operating Companies and ESI, to pay debt service and to meet its working capital and other cash needs.

ETC proposes to enter into arrangements with the System Operating Companies, and other Entergy subsidiary companies permitting ETC to use and make available to nonassociate companies from time to time certain unused capacity on the Entergy System's Telecommunications Backbone System (''Backbone System'') for the purpose of providing interstate ''long haul'' or ''carrier of carriers'' services.[2]

ETC would enter into one or more Capacity Use and Service Agreements (''Agreement'') with the System Operating Companies and ESI under which they would make available to ETC unused capacity on the Backbone System, as determined from time to time. The System Operating Companies and ESI would retain full ownership of, and rights to operate and maintain, their respective portions of the Backbone System. Capacity on the Backbone System would not be deemed unused or made available to ETC for any period of time in which it would interfere with the actual and anticipated usage of the Backbone System for utility purposes by other System companies.

Under the Agreements, ETC would receive only the right to commercialize for interstate carrier of carriers purposes the unused communications capacity on the Backbone System (i.e., the right to commercialize the signal transmission and carrying capability of the Backbone System). Accordingly, the System Operating Companies would not transfer ownership or control of the Backbone System to ETC or to any nonassociate company.

ETC would be responsible pursuant to the Agreements for monitoring, establishing and evaluating operational standards for use of the Backbone System by its nonassociates. ETC also would cause to be developed, constructed and installed, at no cost to the System Operating Companies or ESI, equipment and facilities to link the Backbone System to the telecommunications systems of other carriers. Any such equipment or facilities located on utility property would be owned by the appropriate System Operating Company or ESI. ETC also, under certain circumstances, would make additional investments in advanced electronics and other new technologies that could serve to enhance the transmission capability of the Backbone System. ETC would pay for the full costs (including both capital and increased operating and maintenance expenses) of such upgrades, if such upgrades are not primarily for utility-related purposes or if they would not have been necessary but for the use of capacity by ETC pursuant to the Agreement(s).

ETC may acquire rights to use the capacity of telecommunications systems of non-System parties in order to enhance its ability to commercialize the unused capacity on the Backbone System. This would be done at no cost to the System Operating Companies. Arrangements with nonassociates may take the form of capacity exchanges or other reciprocal use or ''in kind'' transactions, pooling arrangements, consortia, joint ventures or other transactions involving the use of, or access to, the unused capacity on the Backbone System. The purposes of these transactions would include, but not be limited to, providing alternative or extended routing for fiber-based or wireless telecommunications, creating back-up or other redundant telecommunications networks, and other measures designed to enhance the capability and value of the Backbone System. The particular terms and conditions regarding the provision of interstate carrier of carriers telecommunications services by ETC to nonassociates would be negotiated at arm's length between such parties. In addition, ETC proposes to provide unused capacity on the Backbone System, at cost to associate companies that are not regulated utilities, including EEI and SASI.

ETC also proposes to engage in research and development activities relating to telecommunications and information systems and products that might potentially be deployed on a utility or non-utility basis, or both. ETC will be a ''clearinghouse'' for telecommunications and information systems technologies, undertaking research and development activities, field testing various manufacturers' equipment, and evaluating prototype technologies and equipment that may be useful in enhancing the operation of utility and nonutility telecommunications facilities. Entergy believes such activities will facilitate the design and development of communications practices and applications in connection with the Backbone System. In conjunction with such activities, ETC may acquire ownership of, or licenses to use or sublicense, telecommunications products or technologies, and may provide consulting services.

Entergy expects to staff ETC initially through a combination of recruiting (e.g., marketing and business staff) and transfers from ESI. Total staffing is not expected to exceed thirty employees, including up to ten employees transferred from ESI. In accordance with the terms of settlement arrangements among the Entergy System Operating Companies and certain of their retail regulators (''Settlement Arrangement''),[3] Entergy would not effect any personnel transfers that would adversely affect ESI or any System Operating Company. Moreover, no more than one percent (1%) of the total number of the personnel of the System Operating Companies and ESI would be utilized by ETC at any one time in connection with its authorized activities.

In exchange for the right under the Agreements, ETC would pay to the respective System companies a monthly

[2] The Backbone System is the Entergy system's fiber optic network, high capacity analog and digital telecommunications system, related coaxial cables, computers, software and other telecommunications equipment, facilities and property, and any future extensions and additions to such systems, equipment, facilities and property.

[3] The settlement arrangement is currently pending before the Commission under file no. 70–8529.

charge calculated pursuant to the Settlement Arrangements to fully reimburse each System company for its direct and indirect costs associated with that portion of the capacity of the Backbone System being made available to ETC. ETC will receive from the System Operating Companies under the Agreements, installation, operations, maintenance and repair services relating to their respective portions of the Backbone System. ESI and the System Operating Companies would also charge ETC for the fully allocated direct and indirect cost of the telecommunications services provided in accordance with the Settlement Arrangements.

The System Operating Companies would apply such payments to reduce their costs of service, to the extent that the related facilities are in rate base or otherwise are used in utility operations. The Agreements will contain provisions that ensure that ETC's usage, and the usage by nonassociates, of the Backbone System would not in any way interfere with the operation of the Backbone System by the System Operating Companies and ESI.

To the extent that any upgrades of the Backbone System are contemplated primarily for utility purposes, the System Operating Companies or ESI would fund the costs of and deploy the assets, and payments under the Capacity Use and Service Agreements would be adjusted accordingly. ETC would pay for the full costs (including both capital and increased operating and maintenance expenses) of such upgrades, if such upgrades are not primarily for utility-related purposes or if they would not have been necessary but for the use of capacity by ETC pursuant to the Agreements. ETC will further agree under the Agreement(s) to indemnify and hold harmless the System Companies and ESI from any claims, liabilities and costs arising out of or related to ETC's activities with respect to its customers' use of the Backbone System.

Although ETC will have its own managerial, technical and administrative staff, pending full deployment of its own workforce, and from time to time thereafter, ETC will receive services from ESI and the System Operating Companies, including managerial, accounting, technical, engineering, legal and other services. Therefore, ETC will enter into a service agreement with ESI whereby ESI would perform or cause to be performed for ETC these various services relating to the Backbone System, similar to the services that ESI currently provides to other nonutility Entergy system companies such as EEI.

**Leidy Hub, Inc., et al. (70–8655)**

Leidy Hub, Inc. (''Leidy Hub''), 10 Lafayette Square, Buffalo, New York 14203, a wholly-owned nonutility subsidiary of National Fuel Gas Company (''NFG''), a registered public utility holding company, and NFG, 30 Rockefeller Plaza, New York, New York 10112, have filed an application-declaration with this Commission under sections 9(a), 10, 12(b) and 13(b) of the Act and rule 45 thereunder.

Leiby Hub proposes to acquire a 14.5% interest in Enerchange, a Delaware member-managed limited liability company, from Hub Services, a nonaffiliated Delaware corporation and a wholly owned subsidiary of NGC Corporation. Enerchange was formed, among other reasons: (i) To develop, implement and operate an electronic gas trading and nomination system; and (ii) to manage, own and operate Enerchange's interests in the Chicago Hub, the California Energy HUB and the Ellisburg-Leigy Northeast Hub, each a natural gas market area hub. As a member of Enerchange, Leidy Hub would make capital contributions from time to time as required by Enerchange's Executive Committee pursuant to the Limited Liability Company Agreement of Enerchange, L.L.C.[4] If another member of Enerchange failed to make any required capital contribution, Leidy Hub proposes that it may make loans to Enerchange to compensate for the defaulting member's unpaid capital contribution. The amount of the loan would be based on the ratio of Leidy Hub's 14.5% interest to the interests of the other nondefaulting members of Enerchange. Enerchange plans to join with a subsidiary of Energy Exchange, Inc., a nonaffiliated Canadian corporation, to acquire a 50% interest in QuickTrade, a Delaware member-managed limited liability company to be formed in the future.[5] QuickTrade would develop and operate an electronic trading and nomination system which could be accessed via computer by buyers and sellers of natural gas to make and accept binding offers to buy or sell gas at specific locations, generally at market hubs. Subscribers to QuickTrade's system would be able to see, on-line in real time, the price at which gas is being sold at any location listed on the system (without being able to see the names of the parties involved). Subscribers will also be able to nominate directly to interstate pipelines to transport or store the gas being sold via the system. The operations of QuickTrade would be limited to ''cash forward contracts'' typically settled by actual physical delivery. QuickTrade will not be involved with futures contracts.

Enerchange would subscribe to the QuickTrade system and use it to buy and sell natural gas and to engage in market-making activities. Specifically, Enerchange would act as an intermediary between potential buyers and sellers of natural gas, including, without limitation, electronic solictation of transactions between anonymous sellers and buyers, implementation and documentation of such transactions, and assumption of the performance and credit risk associated with such transactions.

It is also proposed that NFG guarantee certain obligations of Leidy Hub, Enerchange and QuickTrade and that Leidy Hub guarantee certain obligations of Enerchange and QuickTrade in a total amount not to exceed $5 million outstanding at any time from time to time for a period not to exceed four years through December 31, 2000. The obligations of Leidy Hub, Enerchange and QuickTrade to be guaranteed would be incurred as a result of the activities undertaken by Enerchange and QuickTrade related to the supply of natural gas. Whenever Enerchange is required to provide a guarantee, it would be provided 14.5% by NFG and/or Leidy Hub and 85.5% by the other members of Enerchange and/or their corporate parents. Such guarantees include the guarantee of obligations associated with: (i) Gas transportation agreements to be entered into by Enerchange with local distribution companies or pipelines; (ii) gas purchase and sale agreements entered into by Enerchange; and (iii) any and all other agreements relating to the transportation, storage or supply (including marketing) of natural gas.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–18598 Filed 7–27–95; 8:45 am]

BILLING CODE 8010–01–M

[4] Leidy Hub and NFG state that such capital contributions would be exempt from the requirement for a declaration under section 12(b) pursuant to rule 45(b)(4).

[5] Leidy Hub and NFG state that Enerchange's participation in this transaction would be exempt from the requirement for a declaration because Enerchange satisfies the requirements of rule 16.

**[Investment Company Act Release No. 21225; 811–7378]**

## U.S. Dollar Cash Reserves Portfolio; Notice of Application

July 21, 1995.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

**APPLICANT:** U.S. Dollar Cash Reserves Portfolio.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant requests an order declaring it has ceased to be an investment company.

**FILING DATE:** The application was filed on July 12, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, Elizabethan Square, Shedden Road, George Town, Grand Cayman, Cayman Islands, B.W.I.

**FOR FURTHER INFORMATION CONTACT:** Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant is an open-end, diversified management investment company that was organized as a business trust under the laws of the State of New York. On December 8, 1992, applicant registered as an investment company under section 8(a) of the Act. On that same date, applicant filed a registration statement under section 8(b) of the Act. The registration statement never became effective.

2. Applicant never issued any securities. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceedings.

3. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

4. Applicant has been dissolved pursuant to the laws of the State of New York.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland**

*Deputy Secretary.*

[FR Doc. 95–18599 Filed 7–27–95; 8:45 am]

**BILLING CODE 8010–01–M**

## SOCIAL SECURITY ADMINISTRATION

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on July 14, 1995.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package.)

Information Collections Conducted by State Disability Determination Services (DDS) on Behalf of SSA—0960–NEW. The information collections are conducted in support of the SSA's disability program. There are three categories of information collections—medical evidence requirements (MER), consultative exams (CE), and consultative exam (CE) providers. DDSs use MER information to determine a person's physical and/or mental status prior to making a disability determination. DDSs use CE information to make disability determinations when the claimant's own medical sources cannot or will not provide the information. The information obtained from claimants is used to obtain release of medical information to personal physicians and to confirm scheduled appointments. DDSs use the CE provider information to verify a medical provider's credentials and license before hiring them to conduct consultative exams. The respondents are medical providers and claimants for CE information collections and medical providers for CE providers and MER information collections.

*MER:*

*Number of Responses*: 9.181 million
*Frequency of Response*: Unknown
*Average Burden Per Response*: 15 minutes
*Estimate Annual Burden*: 2,295,250 hours

*CE:* (Respondents—Medical Providers)

*Number of Responses:* 3 million
*Frequency of Response:* Unknown
*Average Burden Per Response:* 30 minutes
*Estimated Annual Burden:* 1.5 million hours

CE: (Respondents—Claimants)

| | | |
|---|---|---|
| *Number of Responses:* | 750,000 | 1.5 million |
| *Average Burden Per Response:* | 5 minutes | 5 minutes |
| *Estimated Annual Burden:* | 125,000 hours | 250,000 hours |

*CE Providers:*

Number of Responses: 6,300

*Frequency of Response:* 1

*Average Burden:* 20 minutes

*Estimated Annual Burden:* 2,100 hours.

*OMB Desk Officer:* Laura Oliven

### Social Security Adminiatration

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: Office of Management and Budget, OIRA, New Executive Office Building, Room 10230, Washington, D.C. 20503.

Dated: July 24, 1995.

**Charlotte Whitenight,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 95–18574 Filed 7–27–95; 8:45 am]

**BILLING CODE 4190–29–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Intent To Close Program Solicitation No. 95.1, Grants for Aviation Research

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of closure of solicitation.

**SUMMARY:** The Federal Aviation Administration (FAA) is announcing its intention to close Program Solicitation No. 95.1, Grants for Aviation Research, effective August 25, 1995. The Solicitation will be reopened at a time to be announced after November 1, 1995.

The FAA has the authority to solicit proposals and award grants and cooperative agreements to address the long-term technical needs of the National Airspace System (NAS) pursuant to Section 9205, Aviation Research Grant Program, and Section 9208, Catastrophic Failure Prevention Research Program, of the Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990 (Pub. L. 101–508) and Section 107 of the Aviation Security Improvement Act of 1990 (Pub. L. 101–604).

**ADDRESSES:** Inquiries regarding this subject matter should be directed to: Dr. Fred W. Snyder, Grants Officer, Office of Research and Technology Applications, AAR–201, Federal Aviation Administration Technical Center, Atlantic City International Airport, NJ 08405, Phone Number: (609) 485–5769 or (609) 485–5652, Fax Number: (609) 485–6509.

Dated: July 18, 1995.

**Andres Zellweger,**

*Director, Office of Aviation Research.*

[FR Doc. 95–18615 Filed 7–27–95; 8:45 am]

BILLING CODE 4910–13–M

### Availability of Solicitation for Development of a High Speed Computer Tomography Explosive Detection Device; Extension

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of Availability of Solicitation; extension of solicitation closing date.

**SUMMARY:** This document extends the period for requests for and responses to Federal Aviation Administration Research Grant Solicitation 95.3, Development of a High Speed Computed Tomography Explosive Detection Device (EDS).

**DATES:** Requests for the solicitation must be received on or before August 1, 1995. The solicitation will close on September 8, 1995. All applications responsive to the solicitation must be received on or before September 8, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathleen Fazen, Federal Aviation Administration Technical Center, Building 270, Room B115, Atlantic City International Airport, NJ 08405, (609) 485–4431.

Dated: July 19, 1995.

**Andres Zellweger,**

*Director, Office of Aviation Research.*

[FR Doc. 95–18616 Filed 7–27–95; 8:45 am]

BILLING CODE 4910–13–M

### Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

**DATES:** The meeting will be held on August 15, 1995, at 9 a.m. Arrange for oral presentations by August 1, 1995.

**ADDRESSES:** The meeting will be held at the Regional Airline Association, 1200 19th Street, NW., Washington, DC, 10 a.m.

**FOR FURTHER INFORMATION CONTACT:** Miss Jean Casciano, Federal Aviation Administration (ARM–25), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on August 15, 1995, at the Regional Airline Association, 1200 19th Street, NW., Washington, DC, 10 a.m. The agenda will include:

- An update on the status of the Digital Information Working Group.
- A status report from the Flight Data Recorder Working Group.
- A discussion of ARAC mailouts.
- Notable comments on specific issues.
- Other business.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by August 1, 1995, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on July 20, 1995.

**Chris A. Christie,**

*Executive Director, Aviation Rulemaking Advisory Committee.*

[FR Doc. 95–18588 Filed 7–27–95; 8:45 am]

BILLING CODE 4910–13–M

### RTCA, Inc.; Aviation Systems Design Guidelines for Open Systems Interconnection (OST)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Special Committee 162 meeting to be held August 15–17, 1995, starting at 9 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda for August 15 will be as follows: (1) Chairman's Introductory Remarks; (2) Approval of the Minutes of the Previous Meeting; (3) Reports of Related Activities Being Conducted by Other Organizations; (4) Discussion of Conformance and Interoperability procedures and Standards Applicable to Avionics MOPS; (5) Discussion of Other Issues Related to ANT Router MOPS Development; (6) Other Business; (7) Date and Place of Next Meeting. The August 16–17 agenda will be dedicated to further development of the ATN Router MOPS.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 24, 1995.

**Janice L. Peters,**

*Designated Official.*

[FR Doc. 95–18589 Filed 7–27–95; 8:45 am]

**BILLING CODE 4810–13–M**

## RTCA, Inc.; Free Flight Implementation Task Force

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Free Flight Implementation Task Force meeting to be held August 15–16, 1995, starting at 9:00 a.m. The meeting will be held at ARINC, 2551 Riva Road, Annapolis, Maryland.

The agenda will be as follows: Tuesday, August 15 Plenary Session: Review of Task Force Objectives and Status (Task Force Chairman and Working Group Co-Chairs). Remainder of August 15 and all of August 16: Separate and Concurrent Working Group Deliberations.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information, should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on July 24, 1995.

**Janice L. Peters,**

*Designated Official.*

[FR Doc. 95–18590 Filed 7–27–95; 8:45 am]

**BILLING CODE 4810–13–M**

## Research and Special Programs Administration

**[Notice No. 95–9]**

## Improving the Hazardous Materials Safety Program; Public Meetings Related to Regulatory Review and Customer Service

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice of public meetings.

**SUMMARY:** This notice announces five public meetings to seek information from the public on regulatory reform and improved customer service for RSPA's hazardous materials safety program. This series of meetings is a follow-up to the initial series of public outreach meetings held earlier this year. Please note that meetings three through five below are tentatively scheduled pending approval of FY 1996 funding.

**ADDRESSES:** See Supplementary Information for specific times, locations, and agendas.

**DATES:** Public meetings will be held as follows:

(1) September 14, 1995, in Cambridge, Massachusetts.

(2) September 28, 1995, in Philadelphia, Pennsylvania.

(3) October 31, 1995, in Seattle, Washington.

(4) November 2, 1995, in Charlotte, North Carolina.

(5) November 16, 1995, in San Diego, California.

**FOR FURTHER INFORMATION CONTACT:** Edmund J. Richards, Interagency Hazardous Materials Program Coordinator, (202) 366–0656; or Suezett Edwards, Training and Information Specialist, (202) 366–4900; Hazardous Materials Safety, RSPA, Department of Transportation, Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:** On March 4, 1995, President Clinton issued a memorandum to heads of departments and agencies calling for a review of all agency regulations and elimination or revision of those that are outdated or in need of reform. The President also directed that front line regulators ''* * * get out of Washington and create grassroots partnerships'' with people affected by agency regulations.

On September 11, 1993, the President signed an Executive Order on setting customer service standards. The Executive Order promotes continuing reform of the executive branch's management practices and operations to provide service to the public that matches or exceeds the best service available to the private sector. RSPA is seeking information from individuals and businesses impacted by its hazardous materials safety program to determine the kind and quality of services they want and their level of satisfaction with existing services.

A series of outreach meetings to address these two topics was held earlier this year in San Francisco, California; Chicago, Illinois; Clearwater and Tampa, Florida; Houston, Texas, and Minneapolis, Minnesota. Many participants requested that these meetings be continued on a regular basis and scheduled in areas of the country not previously covered. RSPA is attempting to be responsive to their requests.

### Areas of Regulatory Concern

In calling on agencies to review, revise, and when necessary, cut obsolete regulations, the President directed each agency to consider the following issues:

- Is the regulation obsolete?
- Could its intended goal be achieved in more efficient, less obtrusive ways?
- Are there better private sector alternatives, such as market mechanisms, that can better achieve the public good envisioned by the regulation?
- Could private business, setting its own standards and being subject to public accountability, do the job as well?
- Could the states or local governments do the job, making Federal regulation unnecessary?
- Can certain regulatory provisions be relaxed without unduly impacting safety?

### Improvements to Customer Service

At these meetings, RSPA will solicit comments on the kind and quality of services its customers want and their level of satisfaction with the services currently provided by the hazardous materials safety program. RSPA will use the comments received to establish service standards and measure results against them; provide choices in both the sources of service and the means of delivery; make information, services, and complaint systems easily accessible; and provide a means to address customer complaints. RSPA's current customer services include providing guidance in understanding and complying with the HMR and processing exemptions, approvals, registrations, grant applications and enforcement actions. Other customer services include conduct of multi-modal hazardous materials seminars, operation of the Hazardous Materials Information Exchange (HMIX) electronic bulletin board, and development and dissemination of training and information materials.

### Conduct of Meetings

The meetings will be informal, intended to produce a dialogue between agency personnel and those persons directly affected by the hazardous materials safety programs, regulations and customer services. The meeting officer may find it necessary to limit the time allocated each speaker to ensure that all participants have an opportunity to speak. Conversely, a meeting may conclude before the time scheduled if all persons wishing to participate have been heard.

All of the public meetings will have an open agenda and will be held as follows:

(1) September 14, 1995, from 9 a.m. to 4 p.m., in Cambridge, Massachusetts, Volpe National Transportation Systems Center, Kendall Square, Cambridge, Massachusetts, 02142 (Enter through main entrance).

(2) September 28, 1995, from 9 a.m. to 4 p.m., in Philadelphia, Pennsylvania, Federal Reserve Building, 100 N 7th Street (7th and Arch Streets), Philadelphia, Pennsylvania, 19106.

(3) October 31, 1995, from 9 a.m. to 4 p.m., in Seattle, Washington, Jackson Federal Office Building, North Auditorium, 4th Floor, 915 Second Avenue, Seattle, Washington, 98174 (Enter on 2nd Ave. side of building).

(4) November 2, 1995, from 1 p.m. to 6 p.m., in Charlotte, North Carolina, (COHMAT Meeting), Holiday Inn Woodlawn, 212 Woodlawn Road, Charlotte, North Carolina, 28217.

(5) November 16, 1995, from 9 a.m. to 4 p.m., in San Diego, California, Bahia Resort Hotel (COHMED Meeting), 998 West Mission Bay, San Diego, California, 92109.

The meetings scheduled after October 1, 1995 are subject to the approval of FY 1996 program funds. Any changes will be announced in a **Federal Register** notice.

Issued in Washington, D.C. on July 25, 1995.

**Alan I. Roberts,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 95–18614 Filed 7–27–95; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF THE TREASURY

## Office of the Comptroller of the Currency

## Information Collections Submitted to OMB for Review

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Notice of information collections submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) hereby gives notice that it has sent to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act, various information collections.

**DATES:** Comments on these information collections are welcome and should be submitted by August 28, 1995.

**ADDRESSES:** A copy of any information collection may be obtained by calling or writing the OCC contact.

**SUPPLEMENTARY INFORMATION:** In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) has sent to OMB information collections for review under the Paperwork Reduction Act as follows:

### I. OMB CONTROL NUMBER 1557–0106

*Title:* (MA)—Securities Exchange Act Disclosure Rules (12 CFR 11).

*Type of Review:* Regular submission.

*Description:* This information collection requires national banks to file SEC forms concerning their securities transactions.

*Form Number:* SEC Forms 3, 4, 5, 8–K, 10, 10–K, 10–Q, Sched. 13D, 13G, 14A, 14B, and 14C.

*OMB Number:* 1557–0106.

*Affected Public:* Businesses or other for-profit.

*Number of Respondents:* 105 respondents.

*Total Annual Responses:* 504 responses.

*Average Hours Per Response:* 10.1 hours.

*Total Annual Burden Hours:* 5,084 hours.

*OMB Reviewer:* Milo Sunderhauf, (202) 395–7340, Paperwork Reduction Project 1557–0106, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

*OCC Contact:* John Ference or Jessie Gates, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0106), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

*Comments:* Comments regarding the information collection should be addressed to both the OMB reviewer and the OCC contact listed above.

### II. OMB CONTROL NUMBER 1557–0120

*Title:* (MA)—Securities Offering Disclosure Rules (12 CFR 16).

*Type of Review:* Regular submission.

*Description:* This information collection requires national banks to conform generally to SEC rules. The information is needed by the public to make informed investment decisions. The affected public consists of national banks that issue securities.

*Form Number:* None.

*OMB Number:* 1557–0120.

*Respondents:* Businesses or other for-profit.

*Number of Respondents:* 80 respondents.

*Total Annual Responses:* 140 responses.

*Average Hours Per Response:* 19 hours.

*Total Annual Burden Hours:* 2,660 hours.

*OMB Reviewer:* Milo Sunderhauf, (202) 395–7340, Paperwork Reduction Project 1557–0120, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

*OCC Contact:* John Ference or Jessie Gates, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0120), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

*Comments:* Comments regarding the information collection should be addressed to both the OMB reviewer and the OCC contact listed above.

### III. OMB CONTROL NUMBER 1557–0140.

*Title:* Fiduciary Powers of National Banks and Collective Investment Funds (12 CFR 9)

*Type of Review:* Regular submission.

*Description:* The written plan for a collective investment fund provides the operating framework for the fund. The financial report reflects, on an annual basis, the investment status; including investment changes. Both documents serve as the basic disclosure documents for fund participants.

*Form Number:* None.

*OMB Number:* 1557–0140.

*Respondents:* Businesses or other for-profit.

*Number of Respondents:* 2,700 respondents.

*Total Annual Responses:* 2,700 responses.

*Average Hours Per Response:* 6.4 hours.

*Total Annual Burden Hours:* 17,300 hours.

*OMB Reviewer:* Milo Sunderhauf, (202) 395–7340, Paperwork Reduction Project 1557–0140, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

*OCC Contact:* John Ference or Jessie Gates, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0140), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

*Comments:* Comments regarding the information collection should be addressed to both the OMB reviewer and the OCC contact listed above.

**IV. OMB CONTROL NUMBER 1557–0154.**

*Title:* Investment in Bank Premises or Stock of Corporation Holding Premises (12 CFR 7.3100)

*Type of Review:* Regular submission.

*Description:* This regulation prescribes procedures necessary for a national bank to comply with statutory restrictions on its investment in bank premises. A national bank wishing to invest an amount greater than its capital stock must obtain OCC approval under 12 U.S.C. 371d.

*Form Number:* None.

*OMB Number:* 1557–0154.

*Respondents:* Businesses or other for-profit.

*Number of Respondents:* 589 respondents.

*Total Annual Responses:* 589 responses.

*Average Hours Per Response:* 1 hour.

*Total Annual Burden Hours:* 589 hours.

*OMB Reviewer:* Milo Sunderhauf, (202) 395–7340, Paperwork Reduction Project 1557–0154, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

*OCC Contact:* John Ference or Jessie Gates, (202) 874 5090, Legislative and Regulatory Activities Division (1557–0154), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

*Comments:* Comments regarding the information collection should be addressed to both the OMB reviewer and the OCC contact listed above.

**V. OMB CONTROL NUMBER 1557–0159**

*Title:* Fair Housing Home Loan Data System Regulation (12 CFR 27).

*Type of Review:* Regular submission.

*Description:* This information collection is necessary to permit automated statistical analysis to assist the OCC in carrying out its statutory responsibility under the Fair Housing Act. Its major provisions apply only to national banks that engage in high volume real estate lending.

*Form Number:* None.

*OMB Number:* 1557–0159.

*Respondents:* Businesses or other for-profit.

*Number of Respondents:* 3,763 respondents.

*Total Annual Responses:* 3,763 responses.

*Average Hours Per Response:* 1.7 hours.

*Total Annual Burden Hours:* 6,300 hours.

*OMB Reviewer:* Milo Sunderhauf, (202) 395–7340, Paperwork Reduction Project 1557–0159, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

*OCC Contact:* John Ference or Jessie Gates, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0159), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

*Comments:* Comments regarding the information collection should be addressed to both the OMB reviewer and the OCC contact listed above.

Dated: July 24, 1995.

**James F.E. Gillespie,**

*Director, Legislative & Regulatory Activities.*

[FR Doc. 95–18571 Filed 7–27–95; 8:45 am]

BILLING CODE 4810–33–P

# Sunshine Act Meetings

**Federal Register**

Vol. 60, No. 145

Friday, July 28, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL 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 10:08 a.m. on Tuesday, July 25, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Matters relating to the Corporation's supervisory activities.

Matters relating to the probable failure of certain insured depository institutions.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum re: Texas American Bank/Fort Worth, National Association, Forth Worth, Texas
(Case No. 450–05993–95–BOD)

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), 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), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 500—17th Street, N.W., Washington, DC.

Dated: July 26, 1995.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 95–18757 Filed 7–26–95; 3:40 pm]

BILLING CODE 6714–01–M

## MARINE MAMMAL COMMISSION

**TIME AND DATE:** The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Tuesday, November 14, 1995 from 9:00 a.m. to 9:45 a.m. The public sessions of the Commission and the Committee meeting will be held on Tuesday, November 14, from 10:00 a.m. to 6:30 p.m., on Wednesday, November 15, from 9:00 a.m. to 6:00 p.m., and on Thursday, November 16, from 9:00 a.m. to 1:00 p.m.

**PLACE:** The Fairbanks Princess Hotel, 4477 Pikes Landing Road, Fairbanks, Alaska, 99709.

**STATUS:** The executive session will be closed to the public. At it, matters relating to personnel, the internal practices of the Commission, and international negotiations in process will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

**MATTERS TO BE CONSIDERED:** The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. While subject to change, major issues that the Commission plans to consider at the meeting include: implementation of the 1994 amendments to the Marine Mammal Protection Act; the health and stability of the Bering Sea ecosystem; domestic and international polar bear programs; Glacier Bay National Park vessel entry regulations; bowhead whale research and management issues; the Arctic Environmental Protection Strategy; the Russian Marine Mammal council; Steller sea lions, harbor seals; North Pacific fur seals; sea otters, and standards and guidelines for the care and maintenance of captive marine mammals.

**CONTACT PERSON FOR MORE INFORMATION:** John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1825 Connecticut Avenue, NW., Room 512, Washington, D.C. 20009, 202/606–5504.

**SUPPLEMENTARY INFORMATION:** This is a second notice of the Commission's 1995 meeting and does not constitute any significant change in the scheduling, location, or agenda of the meeting as originally published in the June 20, 1995 notice (60 FR 32214).

Dated: July 25, 1995.

**John R. Twiss, Jr.,**

*Executive Director.*

[FR Doc. 95–18690 Filed 7–26–95; 11:16 am]

BILLING CODE 6820–31–M

## EXPORT–IMPORT BANK OF THE UNITED STATES

Open Special Meeting of the Board of Directors of the Export-Import Bank of the United States; Amended Notice

**TIME AND PLACE:** Thursday, August 3, 1995, at 9:30 a.m. The meeting will be held at Eximbank in Room 1141, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

**Agenda**

1. Reinventing Ex-Im Bank's Financing Indications and Commitments (published in the Federal Register of July 17, 1995, on page 36461)
2. Extended Financing Option Fee

**PUBLIC PARTICIPATION:** The meeting will be open to public participation. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Barbara Lane, Room 1112, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3957, not later than Wednesday, August 2, 1995. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to Friday, July 28, 1995, Barbara Lane, Room 1112, 811 Vermont Avenue, N.W., Washington, DC 20571, Voice: (202) 565–3957 or TDD: (202) 535–3377.

**MATERIAL WILL BE AVAILABLE ON JULY 24, 1995:** If any person would like to get the material in advance of the Open Special Board Meeting, contact Barbara Lane, Room 1112, 811 Vermont Avenue, NW, Washington, DC, (202) 565–3957. If you would like the material faxed or mailed, leave your fax number or address on voice mail.

**FURTHER INFORMATION:** For further information, contact Barbara Lane, Room 1112, 811 Vermont Avenue, N.W.,

Washington, D.C. 20571, (202) 565–3957.

**Carol F. Lee,**

*General Counsel.*

[FR Doc. 95–18697 Filed 7–26–95; 11:16 am]

BILLING CODE 6690–01–M

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**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 10 a.m., Wednesday, August 2, 1995.

**PLACE:** William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 26, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95–18691 Filed 7–26–95; 11:16 am]

BILLING CODE 6210–01–P

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**ASSASSINATION RECORDS REVIEW BOARD**

**TIME AND DATE:** 11:30 a.m., August 2, through 5:00 p.m. August 3, 1995.

**PLACE:** ARRB, 600 E Street, NW., 2nd Floor, Washington, DC.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**August 2, 11:30 a.m.: Closed Meeting**

1. Review and Accept Minutes of July 27–28 Closed Meeting
2. Document Review and Discussion

**August 3, 9:00 a.m.: Continuation of Closed Meeting**

1. Document Review, Discussion, and Decisions
2. Designation of Assassination Records

**August 3, 1:00 p.m.: Open Meeting**

1. Review and Accept Minutes of July 27 Open Meeting
2. Consideration of Sunshine Act and FOIA Regulations

**August 3: Continuation of Closed Meeting**

**CONTACT PERSON FOR MORE INFORMATION:** Thomas Samoluk, Associate Director for Communications, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

**Tracy J. Shycoff,**

*Associate Director for Administration.*

[FR Doc. 95–18675 Filed 7–25–95; 4:52 pm]

BILLING CODE 6820–TD–M

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**SECURITIES AND EXCHANGE COMMISSION**

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L .94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 31, 1995.

A closed meeting will be held on Thursday, August 3, 1995, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A), and (10) and 17 CFR 200.402(a) (4), (8), (9)(i), and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, August 3, 1995, at 10:00 a.m., will be:

Institution of injunctive action.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: July 26, 1995.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 95–18766 Filed 7–26–95; 3:45 pm]

BILLING CODE 8010–01–M

# Corrections

**Federal Register**

Vol. 60, No. 145

Friday, July 28, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2932 Maine]**

### S.D. Warren Co., Notice of Intent To File An Application for a New License

June 6, 1995.

*Correction*

In notice document 95–14260 appearing on page 30859 in the issue of Monday, June 12, 1995, the project number should appear as set forth above.

**BILLING CODE 1505–01–D**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ-024-05-1430-01; AZA-29177]**

### Notice of Realty Action; Bureau Motion Recreation and Public Purposes (R&PP) Act Classification; and Termination of Existing R&PP Act Classifications; Arizona

*Correction*

In notice document 95–16701 appearing on page 35420, in the issue of Friday, July 7, 1995, make the following correction:

On page 35420, in the second column, under the heading **Gila and Salt River Meridian, Arizona**, in the land description, under T. 3 S., R. 7 E., in the third line, ''Sec. 9, S½, NE¼, W½, SE¼;'' should read ''Sec. 9, S½NE¼, W½, SE¼;''.

**BILLING CODE 1505–01–D**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. NM–113; Special Conditions No. 25–ANM–101]**

### Special Conditions: Modified Boeing Company Model 747–100 and 747–200 Airplane; High Intensity Radiated Fields (HIRF)

*Correction*

In rule document 95–17589 beginning on page 36967 in the issue of Wednesday, July 19, 1995, make the following correction:

On page 36968, in the first column, under the heading **DATES:**, the text should read as follows: ''The effective date of these special conditions is June 29, 1995. Comments must be received on or before September 5, 1995.''

**BILLING CODE 1505–01–D**

Friday
July 28, 1995

# Part II

# Department of Health and Human Services

## Food and Drug Administration

**21 CFR Part 862 et al.**

**Medical Devices: Class I and Class II Generic Devices; Premarket Notification Exemptions; Final Rule and Proposed Rules**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Parts 862 and 872**

**[Docket No. 94M–0260]**

## Medical Devices; Exemption From Premarket Notification for Certain Classified Devices

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is exempting nine generic types of class I devices from the requirement of premarket notification. For the exempted devices, FDA has determined that manufacturers' submissions of premarket notifications are unnecessary for the protection of the public health and that the agency's review of such submissions will not advance its public health mission. The exemptions allow the agency to make better use of its resources and thus better serve the public. Elsewhere in this issue of the **Federal Register**, FDA is publishing a withdrawal of a proposed rule to grant exemptions from premarket notification for seven other generic types of class I devices. Also, the agency is proposing to exempt an additional 12 generic types of class I devices from the requirement of premarket notification. These actions are being taken under the Medical Device Amendments of 1976.

**DATES:** Effective August 28, 1995. Beginning on August 28, 1995, all device manufacturers who have 510(k) submissions pending FDA review for devices falling within a generic category which is subject to this rule, will receive a letter stating that the device is exempt from the premarket notification requirements of the Federal Food, Drug, and Cosmetic Act.

**FOR FURTHER INFORMATION CONTACT:** Lisa A. Rooney, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765, ext. 164.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of July 21, 1994 (59 FR 37378), FDA issued a proposed rule to exempt 164 generic types of class I devices from the requirement of premarket notification, with limitations. Interested persons were given until October 19, 1994, to comment on the proposed rule.

During the comment period, FDA received comments that questioned the appropriateness of the proposed exemptions for a small number of the devices. FDA also received comments requesting the agency to exempt 56 additional generic types of devices. Furthermore, during this time, FDA reconsidered the appropriateness or scope of the proposed exemptions for several devices included in the proposed rule. In the **Federal Register** of December 7, 1994 (59 FR 63005), FDA issued a final rule exempting from the requirement of premarket notification 148 of the 164 generic types of class I devices included in the July 21, 1994, proposed rule. In the preamble to the final rule, the agency stated that, in a future **Federal Register** notice, it would address the requests concerning the 56 additional devices and that it was deferring action on the following 16 devices in order to review the comments received and to reevaluate whether certain of the devices should be exempted from the requirement of premarket notification. (See Table 1).

TABLE 1

| 21 CFR | Device |
|---|---|
| 862.2270 .... | Thin-layer chromatography system for clinical use. |
| 862.2310 .... | Clinical sample concentrator. |
| 862.2320 .... | Beta or gamma counter for clinical use. |
| 862.2485 .... | Electrophoresis apparatus for clinical use. |
| 862.2720 .... | Plasma oncometer for clinical use. |
| 862.2800 .... | Refractometer for clinical use. |
| 862.2920 .... | Plasma viscometer for clinical use. |
| 864.2280 .... | Cultured animal and human cells. |
| 866.5570 .... | Lactoferrin immunological test system. |
| 868.5620 .... | Breathing mouthpiece. |
| 868.5675 .... | Rebreathing device. |
| 868.5700 .... | Nonpowered oxygen tent. |
| 872.3740 .... | Retentive and splinting pin. |
| 872.3810 .... | Root canal post. |
| 872.6100 .... | Anesthetic warmer. |
| 886.5850 .... | Sunglasses (nonprescription). |

After careful review of the comments and reconsideration of the appropriateness or scope of the proposed exemptions for these devices, the agency has concluded that for 9 of the 16 generic types of class I devices listed in Table 1, manufacturers' submissions of premarket notifications are unnecessary for the protection of the public health and that the agency's review of such submissions will not advance its public health mission. These nine devices are listed in Table 2.

TABLE 2

| 21 CFR | Device |
|---|---|
| 862.2310 .... | Clinical sample concentrator. |
| 862.2320 .... | Beta or gamma counter for clinical use. |
| 862.2485 .... | Electrophoresis apparatus for clinical use. |
| 862.2720 .... | Plasma oncometer for clinical use. |
| 862.2800 .... | Refractometer for clinical use. |
| 862.2920 .... | Plasma viscometer for clinical use. |
| 872.3740 .... | Retentive and splinting pin. |
| 872.3810 .... | Root canal post. |
| 872.6100 .... | Anesthetic warmer. |

FDA, upon reconsideration, has determined not to grant the proposed exemptions for the following seven devices. (See Table 3).

TABLE 3

| 21 CFR | Device |
|---|---|
| 862.2270 .... | Thin-layer chromatography system for clinical use. |
| 864.2280 .... | Cultured animal and human cells. |
| 866.5570 .... | Lactoferrin immunological test system. |
| 868.5620 .... | Breathing mouthpiece. |
| 868.5675 .... | Rebreathing device. |
| 868.5700 .... | Nonpowered oxygen tent. |
| 886.5850 .... | Sunglasses (nonprescription). |

Elsewhere in this issue of the **Federal Register**, FDA is publishing a withdrawal of the proposed rule to grant exemptions from the requirement of premarket notification for the seven devices listed above. FDA's reasons for deciding not to exempt those seven devices are given in that withdrawal document.

Furthermore, after reviewing the comments requesting FDA to exempt from the requirement of premarket notification 56 additional generic types of devices, FDA has concluded that 33 of these 56 devices should not be exempted from the requirement. As stated below in this document, 10 of these 56 devices, along with 2 additional class I devices, are being proposed for premarket notification exemption elsewhere in this issue of the **Federal Register**. Thirteen of the 56 devices already are exempted from the requirement of premarket notification.

### II. Comments

FDA received 10 comments from trade associations, manufacturer associations, a dental firm, a consumer products manufacturer, a company, and a law firm. A summary of the comments and the agency's response to them is provided below.

*A. Comments Addressing Specific Devices*

1. One comment opposed the proposed exemptions from the requirement of premarket notification for the retentive and splinting pin (§ 872.3740) and the root canal post (§ 872.3810). According to this comment, premarket notification submissions are necessary to ensure that the material used in these devices are biocompatable in order to prevent toxicity and/or allergic reactions. The comment also stated that, because teeth are delicate, these devices must be designed so that no undue stress will be imparted upon the teeth. According to this comment, exempting these devices from premarket notification would result in substandard products being made available to dental professionals. Another comment in favor of the exemption disagreed, stating that it is the ''method of use and application'' of these devices, not the design or materials used in them that is the determining factor in the safe and effective use of these devices. Moreover, according to this comment, data relating to these devices demonstrate that these devices are well-known, established, safe, and effective.

FDA has concluded that exempting these devices from the requirement of premarket notification will not result in the marketing of substandard devices. First, both devices have a long history of safe use. Second, neither device has a history of adverse events. Third, literature indicates little potential for any danger to public health. Finally, the device identifications clearly describe the material composition of these devices. If devices are made of materials other than those described in the identification, they will be classified into another generic type of device or remain in the same generic type of device, but not be exempt from the requirements of premarket notification.

2. A comment requested that the proposed exemption for carboxymethylcellulose sodium and/or polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive (§ 872.3490) be expanded to include other double salts of polyvinylmethylether maleic acid, specifically salts involving those ions that achieve the same technical effect as calcium and sodium, i.e., iron, magnesium, zinc, and potassium.

FDA disagrees with this comment. Although the comment refers to carboxymethylcellulose sodium and/or polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive (§ 872.3490), a class I device, the comment is actually requesting FDA to exempt another classified dental adhesive device, polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive (§ 872.3500) which is a class III device.

3. FDA received a comment requesting that an endolumina illuminated bougie (EIB) device, a silicone elastomer coated fiberoptic bundle designed to aid in the identification of the esophagus, rectum, rectosigmoid, and other organs during surgical procedures, be added to the list of class II, tier 1 devices to be proposed for exemption from the requirement of premarket notification in a future issue of the **Federal Register**.

FDA disagrees with this comment. As stated in the July 21, 1994, proposal, in early 1994, FDA's Office of Device Evaluation undertook a risk assessment of all devices in order to ensure the proper allocation of resources for the review process. Under this risk assessment, all class I, class II, and class III devices were placed into one of three tiers based upon the inherent risk associated with each device. Tier 3 devices include all first and second of a kind devices utilizing new technology or having new intended uses(s), as well as other devices determined by their inherent risk to require an intensive review. These tier 3 devices require intensive scientific and labeling review by a review team as well as advisory panel input. Tier 2 devices include devices which require routine scientific and labeling review. This tier encompasses the majority of 510(k)'s and select premarket approval applications. Tier 1 devices include, among other things, devices which have a minimal inherent risk and whose review focuses upon intended use.

FDA had found EIB to be substantially equivalent to both the gastroenterology-urology fiberoptic retractor (§ 876.4530), a class I device and the class I transilluminator (§ 886.1945). However, upon further consideration, FDA now believes that EIB would have been more appropriately classified under the fiberoptic light ureteral catheter (§ 876.4020), a class II device, which is also a fiberoptic bundle that emits light, but is inserted into the ureter to enable it to be seen during lower abdominal or pelvic surgery. While the specific indication statement for these two devices are different, their intended uses are the same and, therefore, the devices are substantially equivalent. Like the fiberoptic light ureteral catheter, EIB is used with a high intensity light source, which could produce heating and potential damage of body tissues. Concerns identified at the time of classification of the fiberoptic light ureteral catheter included thermal burns related to the amount of energy transmitted. For this reason, FDA has placed the fiberoptic light ureteral catheter in class II, tier 2. Additionally, endoscopes (which could have been another predicate) and esophageal dilators (which include the esophageal bougie) are also tier 2 devices. Furthermore, retaining the EIB device in class II, tier 2 is justified because EIB is a one-of-a-kind device. FDA has not yet had sufficient experience with this device to justify a tier 1 premarket review, i.e., a focused labeling review for intended use/indications for use. For the reasons stated above, the EIB device will remain a class II, tier 2 device.

*B. Comments Requesting FDA to Expand the Exemption from the Requirement of Premarket Notification to Include an Additional 56 Devices*

4. A total of eight comments requested that the 56 devices listed in Table 4 also be exempted from the requirement of premarket notification.

TABLE 4

| 21 CFR | Device |
|---|---|
| 862.2230 .... | Chromatographic separation material for clinical use. |
| 862.2250 .... | Gas liquid chromatography system for clinical use. |
| 866.2600 .... | Wood's fluorescent lamp. |
| 868.1930 .... | Stethoscope head. |
| 872.3310 .... | Coating material for resin fillings. |
| 872.3730 .... | Pantograph. |
| 872.3820 .... | Root canal filling resin. |
| 872.4200 .... | Dental handpiece and accessories. |
| 872.5470 .... | Orthodontic plastic bracket. |
| 872.5500 .... | Extraoral orthodontic headgear. |
| 872.6050 .... | Saliva absorber. |
| 872.6390 .... | Dental floss (including devices made of any inert materials). |
| 872.6770 .... | Cartridge syringe. |
| 874.1060 .... | Acoustic chamber for audiometric testing. |
| 874.4140 .... | Ear, nose, and throat bur. |
| 874.4175 .... | Nasopharyngeal catheter. |
| 874.4770 .... | Otoscope. |
| 874.5220 .... | Ear, nose, and throat drug administration device. |
| 874.5800 .... | External nasal splint. |
| 876.4890 .... | Urological table and accessories (manually powered). |
| 876.5160 .... | Urological clamp for males. |
| 876.5250 .... | Urine collector and accessories (not connected to indwelling catheter). |
| 878.4040 .... | Surgical apparel (except surgical gowns and masks). |
| 878.4460 .... | Surgeon's gloves. |
| 880.5110 .... | Hydraulic adjustable hospital bed. |

TABLE 4—Continued

| 21 CFR | Device |
|---|---|
| 880.5120 .... | Manual adjustable hospital bed. |
| 880.5180 .... | Burn sheet. |
| 880.6250 .... | Patient examination glove. |
| 880.6280 .... | Medical insole. |
| 880.6350 .... | Battery-powered medical examination light. |
| 880.6970 .... | Liquid crystal vein locator. |
| 884.5150 .... | Nonpowered breast pump. |
| 884.5425 .... | Scented or scented deodorized menstrual pad. |
| 884.5435 .... | Unscented menstrual pad. |
| 886.4370 .... | Keratome (AC powered). |
| 888.5960 .... | Cast removal instrument (AC powered). |
| 892.1300 .... | Nuclear rectilinear scanner. |
| 892.1320 .... | Nuclear uptake probe. |
| 892.1330 .... | Nuclear whole body scanner. |
| 892.1410 .... | Nuclear electrocardiograph synchronizer. |
| 892.1610 .... | Diagnostic x-ray beam limiting device. |
| 892.1620 .... | Cine or spot flourographic x-ray camera. |
| 892.1760 .... | Diagnostic x-ray tube housing assembly. |
| 892.1770 .... | Diagnostic x-ray tube mount. |
| 892.1830 .... | Radiographic patient cradle. |
| 892.1850 .... | Radiographic film cassette. |
| 892.1860 .... | Radiographic film/cassette changer. |
| 892.1880 .... | Wall-mounted radiographic cassette holder. |
| 892.1890 .... | Radiographic film illuminator. |
| 892.1910 .... | Radiographic grid. |
| 892.1970 .... | Radiographic ECG/respirator synchronizer. |
| 892.1980 .... | Radiologic table. |

TABLE 4—Continued

| 21 CFR | Device |
|---|---|
| 892.5770 .... | Powered radiation therapy patient support assembly. |
| 892.5780 .... | Light beam patient position indicator. |
| 892.5930 .... | Therapeutic x-ray tube housing assembly. |
| 892.6500 .... | Personnel protective shield. |

FDA has concluded that 18 of the 56 devices listed in Table 4 are not candidates for exemption from the requirement of premarket notification because they are currently classified into class II and/or class III. These devices are listed in Table 5.

TABLE 5

| 21 CFR | Device |
|---|---|
| 872.3310 .... | Coating material for resin fillings. |
| 872.3820 .... | Root canal filling resin. |
| 872.5470 .... | Orthodontic plastic bracket. |
| 872.5500 .... | Extraoral orthodontic headgear. |
| 872.6770 .... | Cartridge syringe. |
| 884.5425 .... | Scented or scented deodorized menstrual pad. |
| 892.1610 .... | Diagnostic x-ray beam limiting device. |
| 892.1620 .... | Cine or spot flourographic x-ray camera. |
| 892.1760 .... | Diagnostic x-ray tube housing assembly. |
| 892.1770 .... | Diagnostic x-ray tube mount. |
| 892.1830 .... | Radiographic patient cradle. |
| 892.1850 .... | Radiographic film cassette. |

TABLE 5—Continued

| 21 CFR | Device |
|---|---|
| 892.1860 .... | Radiographic film/cassette changer. |
| 892.1880 .... | Wall-mounted radiographic cassette holder. |
| 892.1980 .... | Radiologic table. |
| 892.5770 .... | Powered radiation therapy patient support assembly. |
| 892.5780 .... | Light beam patient position indicator. |
| 892.5930 .... | Therapeutic x-ray housing assembly. |

In accordance with section 513(e)(1) of the act (21 U.S.C. 360c(e)(1)), any interested person may petition FDA to reclassify a device based on new information respecting such a device and to exempt such a device from the requirement of premarket notification. The form and content required for such a petition are set forth in 21 CFR 860.123. The request and reasons supporting the request for exemption from the requirement of premarket notification should be included in the supplemental data sheet. If a device is reclassified into class I, FDA may also exempt the device from the requirement of premarket notification.

Thirteen of the 56 devices listed in Table 4 have already been exempted from premarket notification procedures on the dates listed below. These devices are listed in Table 6.

TABLE 6

| Date | Federal Register citation | 21 CFR | Device |
|---|---|---|---|
| Nov. 9, 1982 | 47 FR 50823 | 866.2600 | Wood's fluorescent lamp. |
| June 12, 1989 | 54 FR 25042 | 868.1930 | Stethoscope head. |
| Aug. 12, 1987 | 52 FR 30082 | 872.3730 | Pantograph. |
| Apr. 5, 1989 | 54 FR 13828 | 872.6050 | Saliva absorber. |
| Dec. 7, 1994 | 59 FR 63005 | 874.5220 | Ear, nose, and throat drug administration device. |
| Aug. 25, 1987 | 52 FR 32110 | 874.5800 | External nasal splint. |
| June 12, 1989 | 54 FR 25042 | 876.4890 | Urological table and accessories (manually powered). |
| June 12, 1989 | 54 FR 25042 | 880.5110 | Hydraulic adjustable hospital bed. |
| June 12, 1989 | 54 FR 25042 | 880.5120 | Manual adjustable hospital bed. |
| Dec. 7, 1994 | 59 FR 63005 | 880.5180 | Burn sheet. |
| June 12, 1989 | 54 FR 25042 | 880.6280 | Medical insole. |
| Oct. 21, 1980 | 45 FR 69682 | 880.6350 | Battery-powered medical examination light. |
| June 12, 1989 | 54 FR 25042 | 880.6970 | Liquid crystal vein locator. |

Ten of the 56 devices listed in Table 4 are candidates for exemption from the requirement of premarket notification. These devices, which are listed in Table 7, along with the flotation cushion (§ 890.3175) and the traction accessory (§ 890.5925), are being proposed for premarket notification exemption elsewhere in today's issue of the **Federal Register**.

TABLE 7

| 21 CFR | Device |
|---|---|
| 862.2230 .... | Chromatographic separation material for clinical use. |

TABLE 7—Continued

| 21 CFR | Device |
|---|---|
| 872.2230 .... | Dental floss (including devices made of inert materials). |
| 874.1060 .... | Acoustic chamber for audiometric testing. |
| 874.4140 .... | Ear, nose, and throat bur. |
| 874.4175 .... | Nasopharyngeal catheter. |

TABLE 7—Continued

| 21 CFR | Device |
|---|---|
| 874.4770 .... | Otoscope. |
| 884.5150 .... | Nonpowered breast pump. |
| 884.5435 .... | Unscented menstrual pad. |
| 888.5960 .... | Cast removal instrument (AC powered). |
| 892.6500 .... | Personnel protective shield. |

For fifteen of the 56 devices listed in Table 8, FDA has concluded that these devices are not candidates for exemption from premarket notification procedures because they do not meet the criteria for exemption which is set out below.

TABLE 8

| 21 CFR | Device |
|---|---|
| 862.2250 .... | Gas liquid chromatography system for clinical use. |
| 872.4200 .... | Dental handpiece and accessories. |
| 876.5160 .... | Urological clamp for males. |
| 876.5250 .... | Urine collector and accessories (not connected to indwelling catheter). |
| 878.4040 .... | Surgical apparel (except surgical gowns and masks). |
| 878.4460 .... | Surgeon's gloves. |
| 880.6250 .... | Patient examination glove. |
| 886.4370 .... | Keratome (AC powered). |
| 892.1300 .... | Nuclear rectilinear scanner. |
| 892.1320 .... | Nuclear uptake probe. |
| 892.1330 .... | Nuclear whole body scanner. |
| 892.1410 .... | Nuclear electrocardiograph synchronizer. |
| 892.1890 .... | Radiographic film illuminator. |
| 892.1910 .... | Radiographic grid. |
| 892.1970 .... | Radiographic ECG/respirator synchronizer. |

As stated in the preamble of July 21, 1994, proposal, in order for devices to be exempted from the requirement of premarket notification, they must meet all of the following criteria: (1) The device does not have a significant history of false or misleading claims; (2) the device does not have a significant history of risk; (3) characteristics of the device necessary for its safe and effective performance are well established; (4) anticipated changes in the device that could affect safety and effectiveness will either: (a) be readily detectable by users by visual examination or other means or (b) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (5) any changes in the device would not be likely to result in a change in the device's classification.

The gas liquid chromatography system for clinical use (§ 862.2250); the urological clamp for males (§ 876.5160); and the urine collector and accessories (§ 876.5250) are class I, tier 2 devices. As stated above, tier 2 devices require review of performance data because characteristics of these devices necessary for their safe and effective performance are not well established.

Characteristics of the dental handpiece and accessories (§ 872.4200) and the nuclear rectilinear scanner (§ 892.1300), which are necessary for their safety and effective performance, are not well established. Moreover, anticipated changes in the devices that could affect safety and effectiveness are not readily detectable visually or by routine testing and could materially increase the risk of injury, incorrect diagnosis, or ineffective treatment.

The keratome (§ 886.4370) is not a candidate for exemption from premarket notification because anticipated changes that could affect the safety and effectiveness of the device are not readily detectable visually or by routine testing.

Surgical apparel (except surgical gowns and masks (§ 878.4040)) and surgeons's gloves (§ 878.4460) are not candidates for exemption from premarket notification procedures because anticipated changes that could affect safety and effectiveness are not readily detectable visually or by routine testing and could materially increase the risk of injury, namely the transmission of blood bourne pathogens.

In the **Federal Register** of January 13, 1989 (53 FR 1604), the exemptions from premarket notification and current good manufacturing practices for patient examination gloves (§ 880.6250) were revoked because of the importance of this device in preventing the transmission between patients and health care workers of human immunodeficiency virus (HIV) that causes acquired immune deficiency syndrome (AIDS).

The nuclear uptake probe (§ 892.1320); the nuclear electrocardiograph synchronizer (§ 892.1410); the nuclear whole body scanner (§ 892.1330); the radiographic film illuminator (§ 892.1890); the radiographic grid (§ 892.1910); and the radiographic ECG/respirator synchronizer (§ 892.1970) are not candidates for exemption from the requirement of premarket notification because anticipated changes that could affect the devices' safety and effectiveness are not readily detectable visually or by routine testing and could materially increase the risk of injury, incorrect diagnosis, or ineffective treatment.

## III. Environmental Impact

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

## IV. Analysis of Impact

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

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this final rule reduces a regulatory burden by exempting manufacturers of devices subject to the final rule from the requirement of premarket notification, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

## List of Subjects in 21 CFR Parts 862 and 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 862 and 872 are amended as follows:

## PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for 21 CFR part 862 continues to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 862.2310 is amended by revising paragraph (b) to read as follows:

**§ 862.2310 Clinical sample concentrator.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

3. Section 862.2320 is amended by revising paragraph (b) to read as follows:

**§ 862.2320 Beta or gamma counter for clinical use.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

4. Section 862.2485 is amended by revising paragraph (b) to read as follows:

**§ 862.2485 Electrophoresis apparatus for clinical use.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

5. Section 862.2720 is amended by revising paragraph (b) to read as follows:

**§ 862.2720 Plasma oncometer for clinical use.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

6. Section 862.2800 is amended by revising paragraph (b) to read as follows:

**§ 862.2800 Refractometer for clinical use.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

7. Section 862.2920 is amended by revising paragraph (b) to read as follows:

**§ 862.2920 Plasma viscometer for clinical use.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

## PART 872—DENTAL DEVICES

8. The authority citation for 21 CFR part 872 continues to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

9. Section 872.3740 is amended by revising paragraph (b) to read as follows:

**§ 872.3740 Retentive and splinting pin.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

10. Section 872.3810 is amended by revising paragraph (b) to read as follows:

**§ 872.3810 Root canal post.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

11. Section 872.6100 is amended by revising paragraph (b) to read as follows:

**§ 872.6100 Anesthetic warmer.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

Dated: July 18, 1995.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 95–18458 Filed 7–27–95; 8:45 am]

BILLING CODE 4160–01–F

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Parts 862, 864, 866, 868, and 886**

**[Docket No. 94M–0260]**

## Medical Devices; Withdrawal of Proposed Exemptions

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing proposals to exempt seven generic types of class I devices from the requirement of premarket notification. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule exempting nine generic types of class I devices from the requirement of premarket notification. Also elsewhere in this issue of the **Federal Register**, the agency is proposing to exempt an additional 12 generic types of class I devices from the requirement of premarket notification. These actions are being taken under the Medical Device Amendments of 1976.

**FOR FURTHER INFORMATION CONTACT:** Lisa A. Rooney, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765, ext. 164.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of July 21, 1994 (59 FR 37378), FDA issued a proposed rule to exempt 164 generic types of class I devices from the requirement of premarket notification, with limitations. Interested persons were given until October 19, 1994, to comment on the proposed rule.

During the comment period, FDA received comments which questioned the appropriateness of the proposed exemptions for a small number of the devices. FDA also received comments requesting the agency to exempt 56 additional generic types of devices. Furthermore, during this time, FDA was reconsidering the appropriateness or scope of the proposed exemptions for several of the devices included in the proposed rule. In the **Federal Register** of December 7, 1994 (59 FR 63005), FDA issued a final rule exempting from the requirement of premarket notification 148 of the 164 generic types of class I devices included in the July 21, 1994, proposed rule. In the preamble to that rule, the agency stated that, in a future **Federal Register** notice, it would address the requests concerning the 56 additional devices, and that it was deferring action on the following 16 devices in order to review the comments received and to reevaluate whether certain of the devices should be exempted from the requirement of premarket notification. (See Table 1).

TABLE 1

| 21 CFR | Device |
|---|---|
| 862.2270 .... | Thin-layer chromatography system for clinical use. |
| 862.2310 .... | Clinical sample concentrator. |
| 862.2320 .... | Beta or gamma counter for clinical use. |
| 862.2485 .... | Electrophoresis apparatus for clinical use. |
| 862.2720 .... | Plasma oncometer for clinical use. |
| 862.2800 .... | Refractometer for clinical use. |
| 862.2920 .... | Plasma viscometer for clinical use. |
| 864.2280 .... | Cultured animal and human cells. |
| 866.5570 .... | Lactoferrin immunological test system. |
| 868.5620 .... | Breathing mouthpiece. |
| 868.5675 .... | Rebreathing device. |
| 868.5700 .... | Nonpowered oxygen tent. |
| 872.3740 .... | Retentive and splinting pin. |
| 872.3810 .... | Root canal post. |
| 872.6100 .... | Anesthetic warmer. |
| 886.5850 .... | Sunglasses (nonprescription). |

FDA has reviewed the comments and reconsidered the appropriateness or scope of the proposed exemptions for the devices listed above. Upon review and reconsideration, FDA is withdrawing its proposal to exempt six of the devices because the agency has determined that the devices do not meet the criteria for granting such exemptions. These criteria are described in the preamble of the July 21, 1994, proposal. Furthermore, at this time, the agency is withdrawing its proposal to exempt sunglasses (nonprescription) (§ 886.5850) in order to review the large number of comments concerning the proposed limited exemption applicable to this device; however, the agency is continuing to look at ways to appropriately provide an exemption.

The devices for which the proposed exemptions are being withdrawn are listed below.

TABLE 2

| 21 CFR | Device |
|---|---|
| 862.2270 .... | Thin-layer chromatography system for clinical use. |
| 864.2280 .... | Cultured animal and human cells. |
| 866.5570 .... | Lactoferrin immunological test system. |
| 868.5620 .... | Breathing mouthpiece. |
| 868.5675 .... | Rebreathing device. |
| 868.5700 .... | Nonpowered oxygen tent. |
| 886.5850 .... | Sunglasses (nonprescription). |

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule exempting 9 devices from the requirement of premarket notification and responding to requests to exempt 56 additional generic types of devices.

### II. Summary and Analysis of Comments and FDA's Response

A professional association commented that four anesthesia related devices, the breathing mouthpiece (§ 868.5620); the rebreathing device (§ 868.5675); the nonpowered oxygen tent (§ 868.5700); and the anesthetic warmer (§ 872.6100), should not be exempted from the requirement of premarket notification for the reasons stated below.

*A. Breathing Mouthpiece (§ 868.5620)*

This association commented that it would be inappropriate to exempt this generic type of class I device from the requirement of premarket notification because a ''breathing mouthpiece'' may be interpreted to include certain devices for which FDA endorses standard specifications. According to this comment, these detailed standard specifications were established to provide order to the design, performance, and manufacturing of selected airway devices, connectors, and appropriate related apparatus which may be construed as ''mouthpieces.''

*B. Rebreathing Device (§ 868.5675)*

This association stated that certain anesthesia machines, volume ventilators, and resuscitation devices are equipped with nonrebreathing and rebreathing devices, used as components within these systems. Certain rebreathing devices have been directly related to death, serious injury, and serious illness resulting from complications caused by their design, performance, use, and misuse. As a result, the comment contends that rebreathing devices should not be exempt from premarket notification requirements.

*C. Nonpowered Oxygen Tent (§ 868.5700)*

According to this association, the word ''nonpowered'' is confusing and inappropriate to use to specify a type of oxygen tent because, even if electronic controls are not present and electric power is not required, a pneumatic

system will ''power'' an oxygen delivery tent. The association stated that such a pneumatic powered oxygen tent falls within the classification of an oxygen administration system which must satisfy certain criteria and specifications. According to the association, review of premarket notification submissions is the only way to ensure that these devices conform to these criteria and specifications. Thus, the association concluded, these devices should not be exempt from the premarket notification requirements.

*D. Anesthetic Warmer (§ 872.6100)*

This comment was concerned that the words ''anesthetic warmer'' could be applied literally to refer to certain anesthesiology devices associated with known cases of injury, device failure, and misuse. Further, the comment stated that ''anesthetic warmer'' could be applied to anesthesiology devices which are required to follow performance and/or safety specifications.

FDA agrees that the breathing mouthpiece (§ 868.5620); the rebreathing device (§ 868.5675); and the nonpowered oxygen tent (§ 868.5700) should not be exempt from the requirement of premarket notification. Thus, the agency is withdrawing the proposed exemptions for these devices because these devices have a significant history of risk and/or characteristics of the devices necessary for their safe and effective performance are not well established. However, FDA has concluded that the anesthetic warmer (§ 872.6100) should be exempt from the requirement of premarket notification. Moreover, FDA believes that the identification of this device is sufficiently clear to exclude the devices referred to in the comment.

## III. Reconsideration of the Appropriateness or Scope of the Exemptions

FDA reconsidered the appropriateness of exempting cultured animal and human cells (§ 864.2280) from the requirement of premarket notification.

FDA is withdrawing the proposed exemption for this device because, upon reconsideration, the agency has determined that the device does not meet the exemption criteria. The device is comprised of either continuous cell or primary cell lines for the isolation and identification of various pathogenic organisms. If the cells are continuous lines, it must be assured that a mechanism is in place for the manufacturer to determine that the cell line has not changed from the original cell type. After prolonged passages cell lines will deviate from the original cell line and the sensitivity for isolation of organisms is decreased. On the other hand, if the cell line is primary, there must be assurance that the cell line is not contaminated with adventitious organisms which may preclude the isolation or identification of the pathogen from the patient. Sometimes it is not readily apparent whether the cells are contaminated with adventitious organisms. Furthermore, with the advent of genetically engineered cell lines for identification of specific organisms, information must be reviewed to determine whether the genetically engineered cell lines will function as claimed. Also, it must be assured that the labeling is consistent with the effectiveness and use of the specific cell. If an applicant wishes to make effectiveness or use claims which are not supported in the literature, appropriate studies are required to validate these claims. If the device is inappropriately labeled, the risk of incorrect diagnosis or ineffective treatment may be increased.

Upon reconsideration, FDA is withdrawing the proposed exemption for the lactoferrin immunological test system (§ 886.5570) because it is anticipated that there may be significant changes to this device that could affect its safety and effectiveness. Such changes could involve new intended uses and new matrices for which the agency has no information or data. The device is not well characterized and any anticipated changes that could affect safety or effectiveness are not readily detectable by any means and could increase the risk of incorrect diagnosis. Similarly, it must be assured that the labeling for the device is appropriate and accurate for the proposed claims. If the device is not appropriately labeled and the performance established, there may be an increased risk of misdiagnosis.

FDA is also withdrawing the proposed exemption for the thin-layer chromatography system for clinical use (§ 862.2270). Upon further review, FDA has determined that any anticipated changes that could affect the safety and effectiveness of the device are not readily detectable by any means and could materially increase the risk of incorrect diagnosis.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513 and 701(a) (21 U.S.C. 360c and 371(a)) and under 21 CFR 5.10, the proposed rule published in the **Federal Register** of July 21, 1994, is withdrawn with respect to the 7 devices cited in Table 2 of this document.

Dated: July 18, 1995.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 95–18457 Filed 7–27–95; 8:45 am]

BILLING CODE 4160–01–F

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## 21 CFR Parts 862, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, and 892

**[Docket No. 95N–0139]**

## Medical Devices; Proposed Reclassification and Exemption From Premarket Notification for Certain Classified Devices

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to reclassify 112 generic types of class II devices into class I based on new information respecting such devices. FDA is also proposing to exempt the 112 generic types of devices, and 12 already classified generic types of class I devices, from the requirement of premarket notification, with limitations. For the devices for which exemptions are being proposed, FDA has determined that manufacturers' submissions of premarket notifications are unnecessary for the protection of the public health and that the agency's review of such submissions will not advance its public health mission. Granting the exemptions will allow the agency to make better use of its resources and thus better serve the public.

**DATES:** Submit written comments by October 11, 1995. For the devices the agency is proposing to reclassify into class I and exempt from the requirement of premarket notification, FDA is proposing that any final rule that may issue based on this proposed rule become effective August 28, 1995.

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

**FOR FURTHER INFORMATION CONTACT:** Melpomeni K. Jeffries, Center for Devices and Radiological Health (HFZ-404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 *et. seq.*), as amended by the Medical Devices

Amendments of 1976 (Pub. L. 94–295, hereinafter called the amendments) and the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629), establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) establishes three classes of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: Class I, general controls; class II, special controls; and class III, premarket approval.

The effect of classifying a device into class I is to require that the device meet only the general controls which are applicable to all devices. Two types of devices are classified into class I. The first type of class I device is comprised of those devices for which general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the devices (section 513(a)(1)(A)(i) of the act). The second type of class I device consists of those devices for which insufficient information exists to determine that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device * * * but are not purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health and do not present a potential unreasonable risk of illness or injury (section 513(a)(1)(A)(ii) of the act). A ''potential unreasonable risk of illness or injury'' includes actual risk, as well as potential risk. Thus, the risk may be one demonstrated by reported injuries; i.e., medical device reports (MDR's), or it may simply be foreseeable. See H. Rept. 853, 94th Cong., 2d. sess. 36 (1990).

The effect of classifying a device into class II is to require the device to meet general controls as well as special controls, which together provide reasonable assurance of the safety and effectiveness of the device. Class II devices include devices which cannot be classified in class I because general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness and for which there is sufficient information to establish special controls to provide such assurance, including the promulgation of performance standards (see section 513(a)(1)(B) of the act).

The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application (PMA) that includes information concerning safety and effectiveness of the device.

## II. Reclassification Criteria

Pursuant to section 513(e)(1) of the act, based on new information respecting a device, the agency may, upon its own initiative, by regulation change a device's classification and revoke, because of the change in classification, any regulation or requirement in effect with respect to such device under sections 514 or 515 of the act (21 U.S.C. 360d or 21 U.S.C. 360e). The new information respecting a device must demonstrate that either more regulatory control is needed to provide reasonable assurance of the device's safety and effectiveness or that less regulatory control is sufficient to provide such assurance. The following developments have produced new information relating to the devices which justifies reclassifying these devices.

### *A. The SMDA Provisions*

In the **Federal Register** of September 14, 1984 (49 FR 36326 at 36348), FDA issued MDR regulations (21 CFR part 803). These regulations required manufacturers and importers of medical devices, including diagnostic devices, to report to FDA whenever the manufacturer or importer becomes aware of information that reasonably suggests that one of its marketed devices: (1) May have caused or contributed to a death or serious injury, or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur. Because these MDR regulations were not always adequate to protect the public health, the SMDA, which was signed into law on November 28, 1990, added the following MDR requirements and provisions, as well as other requirements and provisions:

(1) Section 518(e) of the act (21 U.S.C. 360h(e)) allows FDA to order a manufacturer or other appropriate firm to immediately cease distribution of a device and immediately notify health professionals and device user facilities to cease using the device after FDA has determined that there is a reasonable probability that the device would cause serious adverse health consequences or death.

(2) Section 519(a)(6) of the act (21 U.S.C. 360i(a)(6)) requires distributors of medical devices to report to FDA adverse experiences related to devices, and to submit copies of reports to device manufacturers.

(3) Section 519(b)(1) of the act (21 U.S.C. 360i(b)(1)) requires certain device user facilities (hospitals, nursing homes, ambulatory surgical facilities, and outpatient treatment facilities which are not physician's offices) to report to FDA and the manufacturer, if known, deaths related to medical devices. Additionally, under this section, device user facilities are required to report to the manufacturer, or to FDA if the manufacturer is unknown, device-related serious illnesses or injuries. User facilities are also required to submit a semiannual report to FDA summarizing the reports they have submitted. Under this section, reporting is limited to events involving a facility's patients.

(4) Section 519(d) of the act (21 U.S.C. 360e(d)) requires manufacturers, importers, and distributors to certify to FDA the number of reports submitted in a year or the fact that no such reports have been submitted to the agency.

(5) Section 519(f) of the act (21 U.S.C. 360i(f)) requires manufacturers, importers, and distributors to report to FDA any removals or corrections of a device intended to reduce a risk to health posed by a device or to remedy a violation of the act which may present a risk to health.

These new authorities, which are applicable to all devices, including class I devices, will enable FDA to monitor the 112 devices proposed for reclassification more closely and to take appropriate remedial action, if necessary.

### *B. The Device Priority Model*

Assuring the safety and effectiveness of all medical devices is an extremely complex and difficult task in light of the number and diversity of devices being marketed. Thus, in 1989, FDA's Office of Standards and Regulations established a Device Priority Model (DPM) to help set priorities for all medical device activities (Ref. 1).

The DPM uses six general parameters, referred to as evaluation factors, to describe and calculate a priority score for each device. The six evaluation factors used in the model are: Frequency of mortality, effectiveness, health benefit, frequency of use, frequency of serious injury, and frequency of less serious injury.

The values for these evaluation factors are combined linearly using weights which represent the relative societal importance of each evaluation factor. The evaluation factors and assigned model weights are as follows: Frequency of death .38, frequency of serious injury .30, frequency of less serious injury .12, frequency of use .08, health benefit .08, and effectiveness .04.

After assigning model weights to the evaluation factors, a three level scoring scheme is applied. Predetermined

ranges of the values of the evaluation factors were used to determine a high, medium, or low scoring level. For frequency of death, frequency of serious injury, and frequency of less serious injury, the correspondence between the estimates for evaluation factor values and evaluation factor scores are: High = 100, medium = 50, and low = 0. The corresponding evaluation factor values and evaluation factor scores for the remaining three evaluation factors (frequency of use, health benefit, and effectiveness) are reversed; low = 100, medium = 50, high = 0. The reason for this reversal is as follows: If one considers two devices that are associated with an equal annual incidence of deaths and injuries, the device that should have the highest priority for FDA action is the one with the highest intrinsic risk per use, the lowest health benefit, and the lowest effectiveness.

The resulting number is called the priority score and is calculated by multiplying the score by the weight. The priority score is used to flag devices that may require more extensive analysis.

*C. The Three Tier System*

In early 1994, FDA's Office of Device Evaluation undertook a risk assessment of all devices in order to ensure the proper allocation of resources for the review process. Under this risk assessment, all class I, class II, and class III devices were placed into one of three tiers based upon the inherent risk associated with each device. Tier 3 devices include many first and second of a kind devices utilizing new technology or having new intended uses(s), as well as other devices determined by their inherent risk to require an intensive review. These tier 3 devices require intensive scientific and labeling review by a review team as well as advisory panel input. Most tier 3 devices require the submission of a premarket approval application. Tier 2 devices include devices which require routine scientific and labeling review. This tier encompasses the majority of 510(k)'s and select PMA's. Tier 1 devices include devices which require only a focused labeling review for intended use/indications for use and devices which have: (1) A score in the DPM less than 30 and/or; (2) no MDR death reports in any of the previous 3 years; and (3) 10 or fewer total injury reports in the previous 3 years.

## III. Class II Devices To Be Reclassified Into Class I

The agency has carefully reviewed all available information concerning all class II, tier 1 devices. Based on this review, FDA is now proposing to reclassify 112 class II, tier 1 devices into class I. All of these devices were originally classified into class II under the original definition of class II devices which was defined as ''a device which cannot be classified as a class I because general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, for which there is sufficient information to establish a performance standard to provide such assurance, * * *.'' See H. Rept. 94–853, 94th Cong., 2d sess. 107 (1976). To date, no performance standards have been promulgated. Thus, any risks presented by these 112 devices have been addressed solely by general controls. The lack of adverse events or threats to the public health reported in the new information described above, supports agency's conclusion that general controls are adequate to provide reasonable assurance of safety and effectiveness for the 112 devices. In light of the new SMDA requirements, the new information gathered in response to the development of the DPM, and the three tier risk assessment system, FDA has determined that general controls will provide reasonable assurance of the safety and effectiveness of these devices.

## IV. Proposed Exemptions

Section 513(d)(2)(A) of the act authorizes FDA to exempt, by regulation, a generic type of class I device from, among other things, the requirement of premarket notification in section 510(k) of the act (21 U.S.C. 360(k)). Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting a premarket notification to FDA. When FDA issued proposed regulations classifying preamendments devices, the agency focused on granting exemptions from the requirement of premarket notification principally when the advisory panels included them in their recommendations to the agency. Subsequently, FDA decided to exempt certain additional class I devices from the requirement of premarket notification in order to reduce the number of unnecessary premarket notifications. Moreover, in accordance with the agency's policy of reducing the number of unnecessary premarket notifications, in the **Federal Register** of December 7, 1994 (59 FR 63005), FDA exempted 148 generic types of class I devices from the requirement of premarket notification, with limitations. These actions help to free agency resources for the review of more complex notifications to FDA.

*A. Description of Proposed Exemptions*

In considering whether to exempt additional class I devices from premarket notification, FDA focused on whether notification for the type of device is unnecessary for the protection of the public health. For the devices in this document, FDA has concluded that premarket notification is unnecessary primarily for the following reasons:

(1) The device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device, such as device design or materials. When making these determinations, FDA generally has considered the frequency, persistence, cause, or seriousness of such claims or risks, as well as other factors deemed relevant.

(2) In general, the following factors apply: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that could affect safety and effectiveness will either: (i) Be readily detectable by users by visual examination or other means, such as routine testing, before causing harm, e.g., testing of a clinical laboratory reagent with positive and negative controls; or (ii) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (c) any changes in the device would not be likely to result in a change in the device's classification.

For the 124 devices, FDA has made the determinations described above based on its knowledge of the devices, including past experience and relevant reports or studies on device performance. Where FDA has concerns only about certain types of changes to a particular class I device, the agency is proposing a limited exemption from premarket notification for that generic type of device. A limited exemption will specify the types of changes to the device for which manufacturers are required to submit a premarket notification. For example, for some devices FDA is proposing to exempt the device from the requirement of premarket notification except when a manufacturer intends to use a different material.

FDA advises manufacturers that an exemption from the requirement of premarket notification is not an exemption from any of the other general controls under the act, including current good manufacturing practices (CGMP's), unless explicitly stated. Indeed, FDA's decision to propose 510(k) exemptions for these devices is based, in part, on the fact that compliance with CGMP's will help ensure product quality.

FDA's decision to grant an exemption from the requirement of premarket notification for a generic type of class I device will be based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change or modification to a device, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification are still required to submit a premarket notification to FDA before introducing a device or delivering it for introduction into commercial distribution when:

(1) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device or a legally marketed device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use instead of use by health care professionals; or

(2) The modified device operates using a different fundamental scientific technology than used by the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

Such changes or modifications to class I devices that are exempt from premarket notification would mean the exemption would no longer apply. Changes or modifications to devices that are not exempt from premarket notification requirements under any regulation must undergo a more comprehensive assessment to determine the impact of the change or modification on the device's safety and effectiveness. FDA intends to develop guidance clarifying when a change or modification to a device requires submission of a premarket notification as defined in 21 CFR 807.81(a)(3).

On the dates listed in Table I, FDA published final regulations classifying, among others, the devices listed below. When FDA classified these devices, the agency did not exempt them from the requirement of premarket notification. Based on the analysis described above, FDA has now determined that premarket notification with respect to the devices listed below is unnecessary for the protection of the public health and will not advance FDA's public health mission. This approach is consistent with the recommendation in the May 1993 report of the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives, entitled ''Less Than the Sum of its Parts Reforms Needed in the Organization, Management, and Resources of The Food and Drug Administration's Center for Devices and Radiological Health.''

As stated above, earlier this year, the Office of Device Evaluation undertook a risk assessment of all devices in order to ensure the proper allocation of resources in the review process. All of the class II devices listed below were placed in tier 1, the category of devices which have a minimal inherent risk and whose review focuses upon intended use. As stated in the **Federal Register** of July 21, 1994 (59 FR 37378), FDA is now proposing to reclassify 112 class II, tier 1 devices into class I and exempt these devices, along with 12 class I, tier 1 devices, from the requirement of premarket notification, with limitations.

FDA is proposing to exempt from the requirement of premarket notification, with limitations, the 124 generic type of devices (including 12 already classified generic types of class I devices; chromatographic separation material for clinical use (§ 862.2230 (21 CFR 862.2230)); dental floss (§ 872.6390 (21 CFR 872.6390)); acoustic chamber for audiometric testing (§ 874.1060 (21 CFR 874.1060)); ear, nose, and throat bur (§ 874.4140 (21 CFR 874.4140)); nasopharyngeal catheter (§ 874.4175 (21 CFR 874.4175)); otoscope (§ 874.4770 (21 CFR 874.4770)); nonpowered breast pump (§ 884.5150 (21 CFR 884.5150)); unscented menstrual pad (§ 884.5435 (21 CFR 884.5435)); cast removal instrument (§ 888.5960 (21 CFR 888.5960)); flotation cushion (§ 890.3175 (21 CFR 890.3175)); traction accessory (§ 890.5925 (21 CFR 890.5925)); and personnel protective shield (§ 892.6500 (21 CFR 892.6500)) listed below:

TABLE 1

| CFR part | Title | Number of devices proposed to be exempt |
|---|---|---|
| 862 | Clinical Chemistry and Clinical Toxicology Devices; May 1, 1987 (52 FR 16102) | 1 |
| 866 | Immunology and Microbiology Devices; November 8, 1982 (47 FR 50814) | 5 |
| 868 | Anesthesiology Devices; July 16, 1982 (47 FR 31130) | 40 |
| 870 | Cardiovascular Devices; February 5, 1980 (45 FR 7904) | 10 |
| 872 | Dental Devices; August 12, 1987 (52 FR 300820); November 20, 1990 (55 FR 484360) | 4 |
| 874 | Ear, Nose, and Throat Devices; November 6, 1986 (51 FR 40378) | 6 |
| 876 | Gastroenterology-Urology Devices; November 23, 1983 (48 FR 53012); June 12, 1989 (54 FR 25042) | 11 |
| 878 | General and Plastic Surgery Devices; June 24, 1988 (53 FR 23856) | 4 |
| 880 | General Hospital and Personal Use Devices; October 21, 1980 (45 FR 69678) | 4 |
| 882 | Neurological Devices; September 4, 1979 (44 FR 51726) | 2 |
| 884 | Obstetrical and Gynecological Devices; February 26, 1980 (45 FR 12682) | 11 |
| 886 | Ophthalmic Devices; September 2, 1987 (52 FR 33346); November 20, 1990 (55 FR 48436) | 4 |
| 888 | Orthopedic Devices; September 4, 1987 (52 FR 33686); November 20, 1990 (55 FR 48436) | 3 |
| 890 | Physical Medicine Devices; November 23, 1983 (48 FR 53032) | 12 |
| 892 | Radiology Devices; January 20, 1988 (53 FR 1554) | 7 |
| Total | | 124 |

TABLE 2.—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

| CFR section | Device |
|---|---|
| 862.2230 ..... | Chromatographic separation material for clinical use. |

FDA is proposing to grant an exemption from the requirement of premarket notification for each of device listed in Table 2 above.

TABLE 3.—IMMUNOLOGY AND MICROBIOLOGY DEVICES

| CFR section | Device |
|---|---|
| 866.2160 ..... | Coagulase plasma. |
| 866.3720 ..... | Streptococcus spp. exoenzyme reagents. |
| 866.5520 ..... | Immunoglobulin G (Fab fragment specific) immunological test system. |
| 886.5530 ..... | Immunoglobulin G (Fc fragment specific) immunological test system. |
| 866.5860 ..... | Total spinal fluid immunological test system. |

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 3 above.

TABLE 4.—ANESTHESIOLOGY DEVICES

| CFR section | Device |
|---|---|
| 868.1100 ..... | Arterial blood sampling kit. |
| 868.1575 ..... | Gas collection vessel. |
| 868.1870 ..... | Gas volume calibrator. |
| 868.2300 ..... | Bourdon gauge flowmeter. |
| 868.2320 ..... | Uncompensated thorpe tube flowmeter. |
| 868.2340 ..... | Compensated thorpe tube flowmeter. |
| 868.2350 ..... | Gas calibration flowmeter. |
| 868.2610 ..... | Gas pressure gauge. |
| 868.2620 ..... | Gas pressure calibrator. |
| 868.2700 ..... | Pressure regulator. |
| 868.2875 ..... | Differential pressure transducer. |
| 868.2885 ..... | Gas flow transducer. |
| 868.2900 ..... | Gas pressure transducer. |
| 868.5100 ..... | Nasopharyngeal airway. |
| 868.5110 ..... | Oropharyngeal airway. |
| 868.5240 ..... | Anesthesia breathing circuit. |
| 868.5300 ..... | Carbon dioxide absorbent. |
| 868.5310 ..... | Carbon dioxide absorber. |
| 868.5320 ..... | Reservoir bag. |
| 868.5375 ..... | Heat and moisture condenser (artificial nose). |
| 868.5460 ..... | Therapeutic humidifier for home use. |
| 868.5530 ..... | Flexible laryngoscope. |
| 868.5540 ..... | Rigid laryngoscope. |
| 868.5550 ..... | Anesthetic gas mask. |

TABLE 4.—ANESTHESIOLOGY DEVICES—Continued

| CFR section | Device |
|---|---|
| 868.5570 ..... | Nonrebreathing mask. |
| 868.5580 ..... | Oxygen mask. |
| 868.5590 ..... | Scavenging mask. |
| 868.5600 ..... | Venturi mask. |
| 868.5770 ..... | Tracheal tube fixation device. |
| 868.5780 ..... | Tube introduction forceps. |
| 868.5790 ..... | Tracheal tube stylet. |
| 868.5810 ..... | Airway connector. |
| 868.5820 ..... | Dental protector. |
| 868.5860 ..... | Pressure tubing and accessories. |
| 868.5975 ..... | Ventilator tubing. |
| 868.5995 ..... | Tee drain (water trap). |
| 868.6400 ..... | Calibration gas. |
| 868.6820 ..... | Patient position support. |
| 868.6885 ..... | Medical gas yoke assembly. |

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 4 above.

TABLE 5.—CARDIOVASCULAR DEVICES

| CFR section | Device |
|---|---|
| 870.2390 ..... | Phonocardiograph. |
| 870.2600 ..... | Signal isolation system. |
| 870.2620 ..... | Line isolation monitor. |
| 870.2640 ..... | Portable leakage current alarm. |
| 870.2810 ..... | Paper chart recorder. |
| 870.3650 ..... | Pacemaker polymeric mesh bag. |
| 870.3670 ..... | Pacemaker charger. |
| 870.3690 ..... | Pacemaker test magnet. |
| 870.3935 ..... | Prosthetic heart valve holder. |
| 870.3945 ..... | Prosthetic heart valve sizer. |

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 5 above.

TABLE 6.—DENTAL DEVICES

| CFR section | Device |
|---|---|
| 872.1840 ..... | Dental x-ray position indicating device. |
| 872.1850 ..... | Lead-lined position indicator. |
| 872.4630 ..... | Dental operating light. |
| 872.6390 ..... | Dental floss. |

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices in Table 6 listed above. The proposed exemption for dental floss (§ 872.6390 (21 CFR 872.6390)) is limited and would apply only when the device is composed of inert material and is not coated or impregnated with chemicals intended to provide a therapeutic benefit or interact with tissues of the oral cavity.

TABLE 7.—EAR, NOSE, AND THROAT DEVICES

| CFR section | Device |
|---|---|
| 874.1060 ..... | Acoustic chamber for audiometric testing. |
| 874.1080 ..... | Audiometer calibration set. |
| 874.4140 ..... | Ear, nose, and throat bur. |
| 874.4175 ..... | Nasopharyngeal catheter. |
| 874.4350 ..... | Ear, nose, and throat fiberoptic light source and carrier. |
| 874.4770 ..... | Otoscope. |

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 7 above. The proposed exemption for the otoscope (§ 874.4770 (21 CFR 874.4770)) is limited and would apply only when used in the external ear canal.

TABLE 8.—GASTROENTEROLOGY-UROLOGY DEVICES

| CFR section | Device |
|---|---|
| 876.1075 ..... | Gastroenterology-urology biopsy instrument. |
| 876.1400 ..... | Stomach pH electrode. |
| 876.1500 ..... | Endoscope and accessories. |
| 876.1800 ..... | Urine flow or volume measuring system. |
| 876.4590 ..... | Interlocking urethral sound. |
| 876.4890 ..... | Urological catheter and accessories. |
| 876.5090 ..... | Suprapublic urological catheter and accessories. |
| 876.5130 ..... | Urological catheter and accessories. |
| 876.5450 ..... | Rectal dilator. |
| 876.5520 ..... | Urethral dilator. |
| 876.5540 ..... | Blood access device and accessories. |

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 8 above. The proposed exemption for the gastroenterology- urology biopsy instrument (§ 876.1075 (21 CFR 876.1075)) is limited and would apply only to the biopsy forceps cover and the nonelectric biopsy forceps. The proposed exemption for the endoscope and accessories (§ 876.1500 (21 CFR 876.1500)) is limited and would apply only to the following specified devices: Photographic accessories for endoscope, miscellaneous bulb adapter for endoscope, binocular attachment for endoscope, eyepiece attachment for

prescription lens, teaching attachment, inflation bulb, measuring device for panendoscope, photographic equipment for physiologic function monitor, special lens instrument for endoscope, smoke removal tube, rechargeable battery box, pocket battery box, bite block for endoscope, and cleaning brush for endoscope. The proposed exemption for the urine flow or volume measuring system (§ 876.1800 (21 CFR 876.1800)) is limited and would apply only to the disposable, nonelectrical urine flow rate measuring device and the nonelectrical urinometer. The proposed exemption for the electrically powered urological table and accessories (§ 876.4890 (21 CFR 876.4890)) is limited and would apply only to stirrups. The proposed exemption for the suprapubic urological catheter and accessories (§ 876.5090 (21 CFR 876.5090)) is limited and would apply only to the catheter punch instrument, nondisposable cannula and trocar, and gastro-urological trocar. The proposed exemption for the urological catheters and accessories (§ 876.5130 (21 CFR 876.5130)) is limited and would apply only to the ureteral stylet (guidewire), stylet for gastro-urological catheter, ureteral catheter holder, ureteral catheter adapter, and ureteral catheter connector. The proposed exemption for the urethral dilator (§ 876.5520 (21 CFR 876.5520)) is limited and would apply only to the urethrometer, urological bougie, filiform and filiform follower, and metal or plastic urethral sound. Finally, the proposed exemption for the blood access device and accessories (§ 876.5540 (21 CFR 876.5540)) is limited and would apply only to the following accessories for both the implanted and the nonimplanted blood access device: Cannula clamp, disconnect forceps, crimp plier, tub plier, crimp ring, and joint ring.

TABLE 9.—GENERAL AND PLASTIC SURGERY DEVICES

| CFR section | Device |
|---|---|
| 878.4450 ..... | Nonabsorbable gauze for internal use. |
| 878.4810 ..... | Laser surgical instrument for use in general and plastic surgery and in dermatology. |
| 878.5350 ..... | Needle-type epilator. |
| 878.5910 ..... | Pneumatic tourniquet. |

FDA is proposing to grant an exemption from the requirement of premarket notification for the devices listed in Table 9 above. The proposed exemption for the laser surgical instrument for use in general and plastic surgery and in dermatology (§ 878.4810 (21 CFR 878.4810) is limited and would apply only to gas mixtures used as the lasing medium for this class of lasers.

TABLE 10.—GENERAL HOSPITAL AND PERSONAL USE DEVICES

| CFR section | Device |
|---|---|
| 880.2720 ..... | Patient scale. |
| 880.2900 ..... | Clinical color change thermometer. |
| 880.6320 ..... | AC-powered medical examination light. |
| 880.5560 ..... | Temperature regulated water mattress. |

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 10 above.

TABLE 11.—NEUROLOGICAL DEVICES

| CFR section | Device |
|---|---|
| 882.1410 ..... | Electroencephalograph electrode/lead tester. |
| 882.4325 ..... | Cranial drill handpiece (brace). |

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 11 above.

TABLE 12.—OBSTETRICAL AND GYNECOLOGICAL DEVICES

| CFR section | Device |
|---|---|
| 884.1550 ..... | Amniotic fluid sampler (amniocentesis tray). |
| 884.1640 ..... | Culdoscope and accessories. |
| 884.1690 ..... | Hysteroscope and accessories. |
| 884.1700 ..... | Hysteroscopic insufflator. |
| 884.1720 ..... | Gynecologic laparoscope and accessories. |
| 884.1730 ..... | Laparoscopic insufflator. |
| 884.4530 ..... | Obstetric-gynecological specialized manual instrument. |
| 884.5150 ..... | Nonpowered breast pump. |
| 884.5425 ..... | Scented or scented deodorized menstrual pad. |
| 884.5435 ..... | Unscented menstrual pad. |
| 884.5900 ..... | Therapeutic vaginal douche apparatus. |

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 12 above. The proposed exemption for the culdoscope and accessories (§ 884.1640 (21 CFR 884.1640)) and the laparoscope and accessories (§ 884.1720 (21 CFR 884.1720)) are limited and would apply only to culdoscope and laparoscope accessories, respectively, that are not part of a specialized instrument or device delivery system and which do not have adapters, connectors, channels, or do not have portals for electrosurgical, laser, or other power sources. Such culdoscope and laparoscope accessory instruments are limited to: Lens cleaning brush; biopsy brush; clip applier (without clips); applicator; cannula (without trocar or valves); ligature carrier/needle holder; clamp/hemostat/grasper; curette; instrument guide; ligature passing and knotting instrument; suture needle (without suture); retractor, mechanical (noninflatable); snare; stylet; forceps; dissector, mechanical (noninflatable); scissors; and suction/irrigation probe. The proposed exemption for the gynecological hysteroscope and accessories (§ 884.1690 (21 CFR 884.1690)) is limited and would apply only to the following manual accessories: Lens cleaning brush; cannula (without trocar or valves); clamp/hemostat/grasper; curette; instrument guide; forceps; dissector; mechanical (noninflatable); and scissors. The proposed exemption for the hysteroscopic or laparoscopic insufflator accessories (§§ 884.1700 and 884.1730 (21 CFR 884.1700 and 884.1730), respectively) is limited and would apply only to tubing and tubing/filter kits used for hysteroscopic or laparoscopic insufflation as single use tubing kits used for only one clinical purpose, i.e., pneumoperitoneum or intrauterine insufflation, but not both. The proposed exemption does not apply to accessories such as hysteroscopic introducer sheaths or Verres needles. The proposed exemption for the obstetric-gynecological specialized manual instruments (§ 884.4530 (21 CFR 884.4530)) is limited and would apply only to the following devices: Amniotome; uterine curette; cervical dilator (fixed-size bougies); cerclage needle; intrauterine device remover; uterine sound; and gynecological biopsy forceps. The proposed exemption for the nonpowered breast pump (§ 884.5150) is limited and would apply only if the device is using either a bulb or telescoping mechanism which does not develop more than 250 mm Hg suction, and the device materials that contact breast or breast milk do not produce cytotoxicity, irritation, or sensitization effects. The proposed exemption for the scented or scented deodorized menstrual pad (§ 884.5425 (21 CFR 884.5425)) and the unscented menstrual pad (§ 884.5435) is limited and would

apply only if the menstrual pad is made from cotton or rayon and the body contact material(s) are safety tested for dermal irritation, dermal sensitivity, acute toxicity, and mucosal irritation. Finally, the proposed exemption for the therapeutic vaginal douche apparatus (§ 884.5900 (21 CFR 884.5900)) is limited and would apply only to devices which operate by gravity feed.

TABLE 13.—OPHTHALMIC DEVICES

| CFR section | Device |
|---|---|
| 886.1405 ..... | Ophthalmic trial lens set. |
| 886.1750 ..... | Skiascopic rack. |
| 886.1760 ..... | Ophthalmic refractometer. |
| 886.3200 ..... | Artificial eye. |

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 13 above. The proposed exemption for the artificial eye (§ 886.3200 (21 CFR 886.3200)) is limited and would apply only to devices made of the same materials, have the same chemical composition, and use the same manufacturing and disinfection processes as currently legally marketed devices.

TABLE 14.—ORTHOPEDIC DEVICES

| CFR section | Device |
|---|---|
| 888.1100 ..... | Arthroscope. |
| 888.3000 ..... | Bone cap. |
| 888.5960 ..... | Cast removal instrument. |

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 14 above. The proposed exemption for the arthroscope (§ 888.1100 (21 CFR 888.1100)) is limited and would apply only to the following manual arthroscope instruments: Cannulas, curettes, drill guides, forceps, gouges, graspers, knives, obturators, osteotomes, probes, punches, rasps, retractors, rongeurs, suture passers, suture knot pushers, suture punches, switching rods, and trocars.

TABLE 15.—PHYSICAL MEDICINE DEVICES

| CFR section | Device |
|---|---|
| 890.1575 ..... | Force-measuring platform. |
| 890.1600 ..... | Intermittent pressure measurement system. |
| 890.1615 ..... | Miniature pressure transducer. |
| 890.3175 ..... | Flotation cushion. |

TABLE 15.—PHYSICAL MEDICINE DEVICES—Continued

| CFR section | Device |
|---|---|
| 890.3760 ..... | Powered table. |
| 890.5380 ..... | Powered exercise equipment. |
| 890.5410 ..... | Powered finger exerciser. |
| 890.5660 ..... | Therapeutic massager. |
| 890.5925 ..... | Traction accessory. |
| 890.5940 ..... | Chilling unit. |
| 890.5950 ..... | Powered heating unit. |
| 890.5975 ..... | Therapeutic vibrator. |

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 15 above.

TABLE 16.—RADIOLOGY DEVICES

| CFR section | Device |
|---|---|
| 892.1700 | Diagnostic x-ray high voltage generator. |
| 892.1760 | Diagnostic x-ray housing assembly. |
| 892.1770 | Diagnostic x-ray tube mount. |
| 892.1830 | Radiologic patient cradle. |
| 892.1880 | Wall-mounted radiographic cassette holder. |
| 892.5780 | Light beam patient position indicator. |
| 892.6500 | Personnel protective shield. |

FDA is proposing to grant an exemption from the requirement of premarket notification for each of the devices listed in Table 16 above. The proposed exemption for the personnel protective shield (§ 892.6500 (21 CFR 892.6500)) is limited and would only apply to devices whose labeling specifies the lead equivalence.

## V. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. The Device Priority Model: Development and Applications, Office of Standards and Regulations, FDA, Rockville, MD, October 1989.

## VI. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment or an environmental impact statement is required.

## VII. Analysis of Impacts

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

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a proposal on small entities. Because this proposal would reduce a regulatory burden by exempting manufacturers of devices subject to the rule from the requirements or premarket notification, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

## VIII. Request for Comments

Interested persons may, on or before October 11, 1995, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

## List of Subjects

*21 CFR Parts 862, 868, 870, 872, 874, 876, 878, 880, 882, 884, 888, and 890*

Medical devices.

*21 CFR Part 866*

Biologics, Laboratories, Medical devices.

*21 CFR Part 886*

Medical devices, Ophthalmic goods and services.

*21 CFR Part 892*

Medical devices, Radiation protection, X-rays.

## PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for 21 CFR part 862 continues to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 862.2230 is amended by revising paragraph (b) to read as follows:

**§ 862.2230 Chromatographic separation material for clinical use.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

## PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

3. The authority citation for 21 CFR part 866 continues to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

4. Section 866.2160 is amended by revising paragraph (b) to read as follows:

**§ 866.2160 Coagulase plasma.**

* * * * *

*(b) Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

5. Section 866.3720 is amended by revising paragraph (b) to read as follows:

**§ 866.3720 Streptococcus spp. exoenzyme reagents.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

6. Section 866.5520 is amended by revising paragraph (b) to read as follows:

**§ 866.5520 Immunoglobulin G (Fab fragment specific) immunological test system.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

7. Section 866.5530 is amended by revising paragraph (b) to read as follows:

**§ 866.5530 Immunoglobulin G (Fc fragment specific) immunological test system.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

8. Section 866.5860 is amended by revising paragraph (b) to read as follows:

**§ 866.5860 Total spinal fluid immunological test system.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

## PART 868—ANESTHESIOLOGY DEVICES

9. The authority citation for 21 CFR part 868 continues to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

10. Section 868.1100 is amended by revising paragraph (b) to read as follows:

**§ 868.1100 Arterial blood sampling kit.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

11. Section 868.1575 is amended by revising paragraph (b) to read as follows:

**§ 868.1575 Gas collection vessel.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

12. Section 868.1870 is amended by revising paragraph (b) to read as follows:

**§ 868.1870 Gas volume calibrator.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

13. Section 868.1975 is amended by revising paragraph (b) to read as follows:

**§ 868.1975 Water vapor analyzer.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

14. Section 868.2300 is amended by revising paragraph (b) to read as follows:

**§ 868.2300 Bourdon gauge flowmeter.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

15. Section 868.2320 is amended by revising paragraph (b) to read as follows:

**§ 868.2320 Uncompensated thorpe tube flowmeter.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

16. Section 868.2340 is amended by revising paragraph (b) to read as follows:

**§ 868.2340 Compensated thorpe tube flowmeter.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

17. Section 868.2350 is amended by revising paragraph (b) to read as follows:

**§ 868.2350 Gas calibration flowmeter.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

18. Section 868.2610 is amended by revising paragraph (b) to read as follows:

**§ 868.2610 Gas pressure gauge.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

19. Section 868.2620 is amended by revising paragraph (b) to read as follows:

**§ 868.2620 Gas pressure calibrator.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

20. Section 868.2700 is amended by revising paragraph (b) to read as follows:

**§ 868.2700 Pressure regulator.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

21. Section 868.2875 is amended by revising paragraph (b) to read as follows:

**§ 868.2875 Differential pressure transducer.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

22. Section 868.2885 is amended by revising paragraph (b) to read as follows:

**§ 868.2885 Gas flow transducer.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket

notification procedures in subpart E of part 807 of this chapter.

23. Section 868.2900 is amended by revising paragraph (b) to read as follows:

**§ 868.2900 Gas pressure transducer.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

24. Section 868.5100 is amended by revising paragraph (b) to read as follows:

**§ 868.5100 Nasopharyngeal airway.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

25. Section 868.5110 is amended by revising paragraph (b) to read as follows:

**§ 868.5110 Oropharyngeal airway.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

26. Section 868.5240 is amended by revising paragraph (b) to read as follows:

**§ 868.5240 Anesthesia breathing circuit.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

27. Section 868.5300 is amended by revising paragraph (b) to read as follows:

**§ 868.5300 Carbon dioxide absorbent.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

28. Section 868.5310 is amended by revising paragraph (b) to read as follows:

**§ 868.5310 Carbon dioxide absorber.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

29. Section 868.5320 is amended by revising paragraph (b) to read as follows:

**§ 868.5320 Reservoir bag.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

30. Section 868.5375 is amended by revising paragraph (b) to read as follows:

**§ 868.5375 Heat and moisture condenser (artificial nose).**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

31. Section 868.5460 is amended by revising paragraph (b) to read as follows:

**§ 868.5460 Therapeutic humidifier for home use.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

32. Section 868.5530 is amended by revising paragraph (b) to read as follows:

**§ 868.5530 Flexible laryngoscope.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

33. Section 868.5540 is amended by revising paragraph (b) to read as follows:

**§ 868.5540 Rigid laryngoscope.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

34. Section 868.5550 is amended by revising paragraph (b) to read as follows:

**§ 868.5550 Anesthetic gas mask.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

35. Section 868.5570 is amended by revising paragraph (b) to read as follows:

**§ 868.5570 Nonrebreathing mask.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

36. Section 868.5580 is amended by revising paragraph (b) to read as follows:

**§ 868.5580 Oxygen mask.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

37. Section 868.5590 is amended by revising paragraph (b) to read as follows:

**§ 868.5590 Scavenging mask.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

38. Section 868.5600 is amended by revising paragraph (b) to read as follows:

**§ 868.5600 Venturi mask.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

39. Section 868.5770 is amended by revising paragraph (b) to read as follows:

**§ 868.5770 Tracheal tube fixation device.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

40. Section 868.5780 is amended by revising paragraph (b) to read as follows:

**§ 868.5780 Tube introduction forceps.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

41. Section 868.5790 is amended by revising paragraph (b) to read as follows:

**§ 868.5790 Tracheal tube stylet.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

42. Section 868.5810 is amended by revising paragraph (b) to read as follows:

**§ 868.5810 Airway connector.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

43. Section 868.5820 is amended by revising paragraph (b) to read as follows:

**§ 868.5820 Dental protector.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

44. Section 868.5860 is amended by revising paragraph (b) to read as follows:

**§ 868.5860 Pressure tubing and accessories.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

45. Section 868.5975 is amended by revising paragraph (b) to read as follows:

**§ 868.5975 Ventilator tubing.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

46. Section 868.5995 is amended by revising paragraph (b) to read as follows:

**§ 868.5995 Tee drain (water trap).**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

47. Section 868.6400 is amended by revising paragraph (b) to read as follows:

**§ 868.6400 Calibration gas.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

48. Section 868.6820 is amended by revising paragraph (b) to read as follows:

**§ 868.6820 Patient position support.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

49. Section 868.6885 is amended by revising paragraph (b) to read as follows:

**§ 868.6885 Medical gas yoke assembly.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

## PART 870—CARDIOVASCULAR DEVICES

50. The authority citation for 21 CFR part 870 continues to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

51. Section 870.2390 is amended by revising paragraph (b) to read as follows:

**§ 870.2390 Phonocardiograph.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

52. Section 870.2600 is amended by revising paragraph (b) to read as follows:

**§ 870.2600 Signal isolation system.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

53. Section 870.2620 is amended by revising paragraph (b) to read as follows:

**§ 870.2620 Line isolation monitor.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

54. Section 870.2640 is amended by revising paragraph (b) to read as follows:

**§ 870.2640 Portable leakage current alarm.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

55. Section 870.2810 is amended by revising paragraph (b) to read as follows:

**§ 870.2810 Paper chart recorder.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

56. Section 870.3650 is amended by revising paragraph (b) to read as follows:

**§ 870.3650 Pacemaker polymeric mesh bag.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

57. Section 870.3670 is amended by revising paragraph (b) to read as follows:

**§ 870.3670 Pacemaker charger.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

58. Section 870.3690 is amended by revising paragraph (b) to read as follows:

**§ 870.3690 Pacemaker test magnet.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

59. Section 870.3935 is amended by revising paragraph (b) to read as follows:

**§ 870.3935 Prosthetic heart valve holder.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

60. Section 870.3945 is amended by revising paragraph (b) to read as follows:

**§ 870.3945 Prosthetic heart valve sizer.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

## PART 872—DENTAL DEVICES

61. The authority citation for 21 CFR part 872 continues to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

62. Section 872.1840 is amended by revising paragraph (b) to read as follows:

**§ 872.1840 Dental x-ray position indicating device.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

63. Section 872.1850 is amended by revising paragraph (b) to read as follows:

**§ 872.1850 Lead-lined position indicator.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

64. Section 872.4630 is amended by revising paragraph (b) to read as follows:

**§ 872.4630 Dental operating light.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

65. Section 872.6390 is amended by revising paragraph (b) to read as follows:

**§ 872.6390 Dental floss.**

* * * * *

(b) *Classification. Class I.* If the device is made of inert materials and is not coated or impregnated with chemicals intended to provide a therapeutic benefit or interact with tissues of the oral cavity, it is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

## PART 874—EAR, NOSE, AND THROAT DEVICES

66. The authority citation for 21 CFR part 874 continues to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

67. Section 874.1060 is amended by revising paragraph (b) to read as follows:

**§ 874.1060 Acoustic chamber for audiometric testing.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

68. Section 874.1080 is amended by revising paragraph (b) to read as follows:

**§ 874.1080 Audiometer calibration test.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

69. Section 874.4140 is amended by revising paragraph (b) to read as follows:

**§ 874.4140 Ear, nose, and throat bur.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

70. Section 874.4175 is amended by revising paragraph (b) to read as follows:

**§ 874.4175 Nasopharyngeal catheter.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

71. Section 874.4350 is amended by revising paragraph (b) to read as follows:

**§ 874.4350 Ear, nose, and throat fiberoptic light source and carrier.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

72. Section 874.4770 is amended by revising paragraph (b) to read as follows:

**§ 874.4770 Otoscope.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when used in the external ear canal.

## PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

73. The authority citation for 21 CFR part 876 continues to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

74. Section 876.1075 is amended by revising paragraph (b) to read as follows:

**§ 876.1075 Gastroenterology-urology biopsy instrument.**

* * * * *

(b) *Classification*. (1) Class II (performance standards).

(2) Class I for the biopsy forceps cover and the nonelectric biopsy forceps. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

75. Section 876.1400 is amended by revising paragraph (b) to read as follows:

**§ 876.1400 Stomach pH electrode.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

76. Section 876.1500 is amended by revising paragraph (b) to read as follows:

**§ 876.1500 Endoscope and accessories.**

* * * * *

(b) *Classification*. (1) Class II (performance standards).

(2) Class I for the photographic accessories for endoscope, miscellaneous bulb adapter for endoscope, binocular attachment for endoscope, eyepiece attachment for prescription lens, teaching attachment, inflation bulb, measuring device for panendoscope, photographic equipment for physiologic function monitor, special lens instrument for endoscope, smoke removal tube, rechargeable battery box, pocket battery box, bite block for endoscope, and cleaning brush for endoscope. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

77. Section 876.1800 is amended by revising paragraph (b) to read as follows:

**§ 876.1800 Urine flow or volume measuring system.**

* * * * *

(b) *Classification*. (1) Class II (performance standards).

(2) Class I for the disposable, nonelectrical urine flow rate measuring device, and nonelectrical urinometer. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

78. Section 876.4590 is amended by revising paragraph (b) to read as follows:

**§ 876.4590 Interlocking urethral sound.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

79. Section 876.4890 is amended by revising paragraph (b) to read as follows:

**§ 876.4890 Urological table and accessories.**

* * * * *

(b) *Classification*. (1) Class II (performance standards) for the electrically powered urological table and accessories.

(2) Class I for the manually powered table and accessories, and for stirrups for electrically powered table. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

80. Section 876.5090 is amended by revising paragraph (b) to read as follows:

**§ 876.5090 Suprapubic urological catheter and accessories.**

* * * * *

(b) *Classification*. (1) Class II (performance standards).

(2) Class I for the catheter punch instrument, nondisposable cannula and trocar, and gastro-urological trocar. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

81. Section 876.5130 is amended by revising paragraph (b) to read as follows:

**§ 876.5130 Urological catheter and accessories.**

* * * * *

(b) *Classification*. (1) Class II (performance standards).

(2) Class I for the ureteral stylet (guidewire), stylet for gastro-urological catheter, ureteral catheter adapter, ureteral catheter connector, and ureteral catheter holder. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

82. Section 876.5450 is amended by revising paragraph (b) to read as follows:

**§ 876.5450 Rectal dilator.**

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

83. Section 876.5520 is amended by revising paragraph (b) to read as follows:

**§ 876.5520 Urethral dilator.**

* * * * *

(b) *Classification*. (1) Class II (performance standards).

(2) Class I for the urethrometer, urological bougie, filiform and filiform follower, and metal or plastic urethral sound. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

84. Section 876.5540 is amended by revising paragraph (b)(3) and by adding new paragraph (b)(4) to read as follows:

**§ 876.5540 Blood access device and accessories.**

* * * * *

(b) * * *

(3) Class II (performance standards) for accessories for both the implanted and the nonimplanted blood access devices not listed in paragraph (b)(4) of this section.

(4) Class I for the cannula clamp, disconnect forceps, crimp plier, tube plier, crimp ring, and joint ring,

accessories for both the implanted and nonimplanted blood access device. The devices subject to this paragraph (b)(4) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

* * * * *

## PART 878—GENERAL AND PLASTIC SURGERY DEVICES

85. The authority citation for 21 CFR part 878 continues to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 522, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371).

86. Section 878.4450 is amended by revising paragraph (b) to read as follows:

### § 878.4450 Nonabsorbable gauze for internal use.

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

87. Section 878.4810 is amended by revising paragraph (b) to read as follows:

### § 878.4810 Laser surgical instrument for use in general and plastic surgery and in dermatology.

* * * * *

(b) *Classification*. (1) Class II.

(2) Class I for special laser gas mixtures used as a lasing medium for this class of lasers. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

88. Section 878.5350 is amended by revising paragraph (b) to read as follows:

### § 878.5350 Needle-type epilator.

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

89. Section 878.5910 is amended by revising paragraph (b) to read as follows:

### § 878.5910 Pneumatic tourniquet.

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

## PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

90. The authority citation for 21 CFR 880 continues to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

91. Section 880.2720 is amended by revising paragraph (b) to read as follows:

### § 880.2720 Patient scale.

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

92. Section 880.2900 is amended by revising paragraph (b) to read as follows:

### § 880.2900 Clinical color change thermometer.

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

93. Section 880.5560 is amended by revising paragraph (b) to read as follows:

### § 880.5560 Temperature regulated water mattress.

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

94. Section 880.6320 is amended by revising paragraph (b) to read as follows:

### § 880.6320 AC-powered medical examination light.

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

## PART 882—NEUROLOGICAL DEVICES

95. The authority citation for 21 CFR part 882 continues to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

96. Section 882.1410 is amended by revising paragraph (b) to read as follows:

### § 882.1410 Electroencephalograph electrode/lead tester.

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

97. Section 882.4325 is amended by revising paragraph (b) to read as follows:

### § 882.4325 Cranial drill handpiece (brace).

* * * * *

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

## PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

98. The authority citation for 21 CFR part 884 continues to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

99. Section 884.1550 is revised to read as follows:

### § 884.1550 Amniotic fluid sampler (amniocentesis tray.

(a) *Identification*. The amniotic fluid sampler (amniocentesis tray) is a collection of devices used to aspirate amniotic fluid from the amniotic sac via a transabdominal approach. Components of the amniocenteses tray include a disposable 3 inch 20 gauge needle with stylet and a 30 cc. syringe, as well as the various sample collection accessories, such as vials, specimen containers, medium, drapes, etc. The device is used at 16–18 weeks gestation for antepartum diagnosis of certain congenital abnormalities or anytime after 24 weeks gestation when used to assess fetal maturity.

(b) *Classification*. Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

100. Section 884.1640 is amended by revising paragraph (b) to read as follows:

### § 884.1640 Culdoscope and accessories.

* * * * *

(b) *Classification*. (1) Class II (performance standards).

(2) Class I for culdoscope accessories that are not part of a specialized instrument or device delivery system; do not have adapters, connectors, channels, or do not have portals for electrosurgical, laser, or other power sources. Such culdoscope accessory instruments include: Lens cleaning brush, biopsy brush, clip applier (without clips), applicator, cannula (without trocar or valves), ligature carrier/needle holder, clamp/hemostat/grasper, curette, instrument guide, ligature passing and knotting instrument, suture needle (without suture), retractor, mechanical (noninflatable), snare, stylet, forceps, dissector, mechanical (noninflatable) scissors, and suction/irrigation probe. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

101. Section 884.1690 is amended by revising paragraph (b) to read as follows:

### § 884.1690 Hysteroscope and accessories.

* * * * *

(b) Classification. (1) Class II (performance standards).

(2) Class I for hysteroscope accessories that are not part of a specialized instrument or device

delivery system, do not have adapters, connectors, channels, or do not have portals for electrosurgical, laser, or other power sources. Such hysteroscope accessory instruments include: Lens cleaning brush, cannula (without trocar or valves), clamp/hemostat/grasper, curette, instrument guide, forceps, dissector, mechanical (noninflatable), and scissors. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

102. Section 884.1700 is amended by revising paragraph (b) to read as follows:

**§ 884.1700 Hysteroscopic insufflator.**

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I for tubing and tubing/filter fits which only include accessory instruments which are not used to effect intrauterine access, e.g., hysteroscopic introducer sheaths, etc., and single-use tubing kits used for only intrauterine insufflation. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

103. Section 884.1720 is amended by revising paragraph (b) to read as follows:

**§ 884.1720 Gynecologic laparoscope and accessories.**

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I for gynecologic laparoscope accessories that are not part of a specialized instrument or device delivery system, do not have adapters, connector channels, or do not have portals for electrosurgical, lasers, or other power sources. Such gynecologic laparoscope accessory instruments include: The lens cleaning brush, biopsy brush, clip applier (without clips), applicator, cannula (without trocar or valves), ligature carrier/needle holder, clamp/hemostat/grasper, curette, instrument guide, ligature passing and knotting instrument, suture needle (without suture), retractor, mechanical (noninflatable), snare, stylet, forceps, dissector, mechanical (noninflatable), scissors, and suction/irrigation probe. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

104. Section 884.1730 is amended by revising paragraph (b) to read as follows:

**§ 884.1730 Laparoscopic insufflator.**

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I for tubing and tubing/filter kits which include accessory instruments which are not used to effect intra-abdominal access, Verres needles etc., and single-use tubing kits used for only intra-abdominal insufflation (pneumoperitoneum). The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

105. Section 884.4530 is amended by revising paragraph (b) to read as follows:

**§ 884.4530 Obstetric-gynecological specialized manual instrument.**

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I for the amniotome, uterine curette, cervical dilator (fixed-size bougies), cerclage needle, IUD remover, uterine sound, and gynecological biopsy forceps. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

106. Section 884.5150 is amended by revising paragraph (b) to read as follows:

**§ 884.5150 Nonpowered breast pump.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter if the device is using either a bulb or telescoping mechanism which does not develop more than 250 mm Hg suction, and the device materials that contact breast or breast milk do not produce cytotoxicity, irritation, or sensitization effects.

107. Section 884.5425 is amended by revising paragraph (b) to read as follows:

**§ 884.5425 Scented or scented deodorized menstrual pad.**

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I for menstrual pads made from cotton or rayon and for which the body contact material(s) and extracts from the absorbent material(s) are safety tested for dermal irritation, dermal sensitivity, acute toxicity, and mucosal irritation. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

108. Section 884.5435 is amended by revising paragraph (b) to read as follows:

**§ 884.5435 Unscented menstrual pad.**

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter only when the device is made from cotton or rayon and for which the body contact material(s) and extracts from the absorbent material(s) are safety tested for dermal irritation, dermal sensitivity, acute toxicity, and mucosal irritation.

109. Section 884.5900 is amended by revising paragraph (b) to read as follows:

**§ 884.5900 Therapeutic vaginal douche apparatus.**

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I if the device is operated by gravity feed. Devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

## PART 886—OPHTHALMIC DEVICES

110. The authority citation for 21 CFR 886 continues to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

111. Section 886.1405 is amended by revising paragraph (b) to read as follows:

**§ 886.1405 Ophthalmic trial lens set.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

112. Section 886.1750 is amended by revising paragraph (b) to read as follows:

**§ 886.1750 Skiascopic rack.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

113. Section 886.1760 is amended by revising paragraph (b) to read as follows:

**§ 886.1760 Ophthalmic refractometer.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

114. Section 886.3200 is revised to read as follows:

**§ 886.3200 Artificial eye.**

(a) *Identification.* An artificial eye is a device resembling the anterior portion of the eye, usually made of glass or plastic, intended to be inserted in a patient's eye socket anterior to an orbital implant, or the eviscerated eyeball, for cosmetic purposes. The device is not intended to be implanted.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter if the device is made from the same materials, has the same chemical composition, and uses

the same manufacturing processes as currently legally marketed devices.

## PART 888—ORTHOPEDIC DEVICES

115. The authority citation for 21 CFR part 888 continues to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

116. Section 888.1100 is amended by revising paragraph (b) to read as follows:

**§ 888.1100 Arthroscope.**

* * * * *

(b) *Classification.* (1) Class II (performance standards).

(2) Class I for the following manual arthroscopic instruments: Cannulas, currettes, drill guides, forceps, gouges, graspers, knives, obturators, osteotomes, probes, punches, rasps, retractors, rongeurs, suture passers, suture knotpushers, suture punches, switching rods, and trocars. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

117. Section 888.3000 is amended by revising paragraph (b) to read as follows:

**§ 888.3000 Bone cap.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

118. Section 888.5960 is amended by revising paragraph (b) to read as follows:

**§ 888.5960 Cast removal instrument.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

## PART 890—PHYSICAL MEDICINE DEVICES

119. The authority citation for 21 CFR part 890 continues to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

120. Section 890.1575 is amended by revising paragraph (b) to read as follows:

**§ 890.1575 Force-measuring platform.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

121. Section 890.1600 is amended by revising paragraph (b) to read as follows:

**§ 890.1600 Intermittent pressure measurement system.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

122. Section 890.1615 is amended by revising paragraph (b) to read as follows:

**§ 890.1615 Miniature pressure transducer.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

123. Section 890.3175 is amended by revising paragraph (b) to read as follows:

**§ 890.3175 Flotation cushion.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

124. Section 890.3760 is amended by revising paragraph (b) to read as follows:

**§ 890.3760 Powered table.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

125. Section 890.5380 is amended by revising paragraph (b) to read as follows:

**§ 890.5380 Powered exercise equipment.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

126. Section 890.5410 is amended by revising paragraph (b) to read as follows:

**§ 890.5410 Powered finger exerciser.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

127. Section 890.5660 is amended by revising paragraph (b) to read as follows:

**§ 890.5660 Therapeutic massager.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

128. Section 890.5925 is amended by revising paragraph (b) to read as follows:

**§ 890.5925 Traction accessory.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

129. Section 890.5940 is amended by revising paragraph (b) to read as follows:

**§ 890.5940 Chilling unit.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

130. Section 890.5950 is amended by revising paragraph (b) to read as follows:

**§ 890.5950 Powered heating unit.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

131. Section 890.5975 is amended by revising paragraph (b) to read as follows:

**§ 890.5975 Therapeutic vibrator.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

## PART 892—RADIOLOGY DEVICES

132. The authority citation for 21 CFR part 892 continues to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

133. Section 892.1700 is amended by revising paragraph (b) to read as follows:

**§ 892.1700 Diagnostic x-ray high voltage generator.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

134. Section 892.1760 is amended by revising paragraph (b) to read as follows:

**§ 892.1760 Diagnostic x-ray tube housing assembly.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

135. Section 892.1770 is amended by revising paragraph (b) to read as follows:

**§ 892.1770 Diagnostic x-ray tube mount.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket

notification procedures in subpart E of part 807 of this chapter.

136. Section 892.1830 is amended by revising paragraph (b) to read as follows:

**§ 892.1830 Radiologic patient cradle.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

137. Section 892.1880 is amended by revising paragraph (b) to read as follows:

**§ 892.1880 Wall mounted radiographic cassette holder.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

138. Section 892.5780 is amended by revising paragraph (b) to read as follows:

**§ 892.5780 Light beam patient position indicator.**

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

139. Section 892.6500 is amended by revising paragraph (b) to read as follows:

**§ 892.6500 Personnel protective shield.**

* * * * *

(b) *Classification.* Class I. If the device's labeling specifies the lead equivalence, it is exempt from the premarket notification procedures in subpart E of part 807 of this chapter.

Dated: July 18, 1995.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

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Part III

# Securities and Exchange Commission

**17 CFR Parts 210, 239, and 274**

**Payment for Investment Company Services With Brokerage Commissions; Final Rule**

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 210, 239, and 274**

**[Release No. 33–7197; IC–21221; FR–46; S7–22–94]**

**RIN 3235–AF94**

## Payment for Investment Company Services With Brokerage Commissions

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final amendments to rules and forms.

**SUMMARY:** The Securities and Exchange Commission is adopting rule and form amendments relating to the reporting of expenses by investment companies. The amendments require an investment company to reflect as expenses in its statement of operations and in other financial information certain liabilities of the company paid by broker-dealers in connection with allocation of the company's brokerage transactions to the broker-dealers and liabilities reduced by certain expense offset arrangements. In addition, the amendments require an investment company to disclose the average commission rate it paid in connection with the purchase and sale of portfolio securities, subject to a *de minimis* exception. The amendments are intended to enhance the information provided to investors so that they may be better able to assess and compare investment company expenses and yield information.

**DATES:** *Effective Date:* The amendments are effective September 1, 1995.

*Compliance Dates:* Proxy statements and shareholder reports filed with the Commission and quotations of yield by investment companies in advertisements or sales literature published or distributed on or after December 1, 1995 must comply with the amendments. Required compliance for financial information appearing in registration statements is staggered to reflect the affected investment companies' annual updating schedules. A more detailed discussion of the compliance dates appears in section of this release.

**FOR FURTHER INFORMATION CONTACT:** Karen J. Garnett, Attorney, Office of Disclosure and Investment Adviser Regulation, (202) 942–0728, or Anthony Evangelista, Assistant Chief Accountant, (202) 942–0636, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission (''Commission'') today is adopting amendments to:

(1) Rule 6–07 of Regulation S–X [17 CFR 210.6–07]; and

(2) Form N–1A [17 CFR 239.15A, 274.11A], Form N–2 [17 CFR 239.14, 274.11a–1], Form N–3 [17 CFR 239.17a, 274.11b], and Form N–4 [17 CFR 239.17b, 274.11c] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''1933 Act'') and the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (''1940 Act'').

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### I. Background

Some investment companies enter into arrangements under which a broker-dealer agrees to pay the cost of certain products or services provided to the investment company in exchange for fund brokerage (''brokerage/service arrangements''). Under a typical brokerage/service arrangement, a broker agrees to pay a fund's custodian fees or transfer agency fees and, in exchange, the fund agrees to direct a minimum amount of brokerage to the broker. The fund usually negotiates the terms of the contract with the service provider, which is paid directly by the broker.[1]

By entering into a brokerage/service arrangement, a fund can reduce expenses reported to shareholders in its statement of operations, fee table, and expense ratio and can increase its reported yield. A fund is able to decrease expenses and increase yield under these arrangements because the costs paid on behalf of the fund by the broker are embedded in the brokerage commissions the fund pays.[2] Brokerage commissions are reflected in the cost basis of the purchased securities or as a reduction of the proceeds from the sale of securities.

On August 11, 1994, the Commission proposed for public comment amendments to its accounting rules that would require fund financial data to reflect amounts the fund would have paid to its service providers if a broker-dealer or any affiliate of the broker-dealer had not paid or agreed to pay those service providers on behalf of the fund in connection with a brokerage/service arrangement.[3] As proposed, the amendments would require that the adjusted expenses be reflected in a fund's fee table and financial highlights table included in the fund's prospectus, and in the yield quotations in the fund's advertisements and sales literature. In addition, the proposed amendments would require that the financial highlights table disclose the average commission rate paid by the fund.

The Commission received comments on the Proposing Release from 104 commenters.[4] Commenters that addressed the substance of the Commission's proposals generally expressed support for the proposed amendments.[5] These commenters expressed their belief that the proposals would enhance the information

[1] Brokerage/service arrangements are structurally similar to the more common research soft dollar arrangements under which an investment adviser uses client commission dollars to obtain research services. In a research soft dollar arrangement, however, the receipt of a benefit by an adviser through the use of its clients' commission dollars raises conflict of interest concerns addressed by the safe harbor provisions of section 28(e) of the Securities Exchange Act of 1934 (''1934 Act'') [15 U.S.C. 78bb(e)]. These concerns generally are not raised by brokerage/service arrangements, which typically involve use of a fund's commission dollars to obtain services that directly and exclusively benefit the fund.

[2] The staff has stated that the safe harbor provided by section 28(e) of the 1934 Act does not encompass soft dollar arrangements under which research services are acquired as a result of principal transactions, *i.e.*, when a broker buys or sells securities for or from its own account. U.S. Department of Labor (pub. avail. July 25, 1990). Because brokerage/service arrangements do not rely on the Section 28(e) safe harbor, a fund may use principal as well as agency transactions to accumulate credits with brokers for the payment of fund expenses. Therefore, references in this release to ''commissions'' or ''commission dollars'' rather than ''spreads'' or ''mark-ups'' are not intended to indicate otherwise.

[3] Investment Company Act Release No. 20472 (Aug. 11, 1994) [59 FR 42187 (Aug. 17, 1994)] (''Proposing Release'').

[4] The Commission received a total of 108 comment letters, as four commenters provided two letters each. The comment letters and a summary of comments prepared by the Commission's staff are available for public inspection and copying in the Commission's public reference room in File No. S7–22–94.

[5] Seventy-one of the 104 commenters, however, limited their comments to the issue of whether the Commission should require funds to include as expenses the cost of research services provided by brokers. *See infra* section.

provided to investors so that they may be better able to assess and compare investment company expenses and performance. The Commission is adopting the proposed amendments with several modifications that reflect the comments received.[6]

## II. Discussion

### *A. Accounting for Expenses*

#### 1. Brokerage/Service Arrangements

The Commission is adopting, substantially as proposed, amendments to rule 6–07 of Regulation S–X[7] to require that the amounts of various expenses (such as custody fees, transfer agency fees, printing and legal fees, and other miscellaneous fees) listed in a fund's statement of operations be adjusted, or ''grossed-up,'' to include amounts paid with commission dollars.[8] The rule amendments require funds to make adjustments to their statements of operations at the time financial statements are prepared, but do not require daily expense accruals for services paid with commission dollars. The rule amendments do not require funds to adjust amounts in the financial statements other than expenses and the expense ratio.[9]

A majority of the commenters that addressed the substance of the proposal supported the proposed accounting changes. These commenters agreed that the gross-up adjustment to expenses would accurately reflect the economic effect of these arrangements, would assist investors in comparing expenses among funds, and would be consistent with current industry reporting standards for statements of operations. Fund industry commenters stated that the method proposed for reflecting broker-paid liabilities as fund expenses was appropriate and not burdensome.[10] Some commenters, however, opposed the proposal, asserting that grossing-up fund expenses would not provide meaningful disclosure to investors and could mislead investors about the benefits to the fund of brokerage/service arrangements. Other commenters objected to the proposal arguing that it would cause funds to overstate expenses.

Commenters opposing the proposed amendments asserted, in effect, that comparable commission rates might be paid by funds that choose not to enter into brokerage/service arrangements, and, therefore fund services provided under brokerage/service arrangements should be treated as ''free'' services and payments by brokers should be ignored. If brokers made these payments to funds in the form of cash, however, fund expenses would not be affected. Thus, it is merely the form these payments take, rather than their substance, that has permitted such payments to reduce fund expenses. To the extent that investors benefit from these arrangements (which the Proposing Release acknowledged they may), the benefit is reflected in overall fund return rather than as a reduction of fund expenses—a result that more accurately reflects these arrangements as a rebate on brokerage.

#### 2. Expense Offset Arrangements

a. *Fee Reductions.* Some funds enter into arrangements that, like brokerage/service arrangements, have the effect of reducing reported fund expenses. In these arrangements (''expense offset arrangements''), however, expenses are reduced by foregoing income rather than by recharacterizing them as capital items. For example, a fund may have a ''compensating balance'' arrangement with its custodian under which the custodian reduces its fees if the fund maintains cash on deposit with the custodian in non-interest or below market interest bearing accounts. Similarly, a fund may enter into a securities lending agreement under which the fund permits the custodian to loan fund securities to third parties (typically unrelated broker-dealers) in exchange for a reduction in custody fees.[11] Expense offset arrangements may involve explicit oral or written agreements regarding the amount of fee reductions. A fund's custody fee may, however, reflect an estimate of the income the custodian expects to derive from an expense offset arrangement, and the resulting fee reduction is not expressly stated in the custodial agreement.

The Commission requested comment whether an adjustment to fund expenses similar to that proposed for brokerage/service arrangements should be required for expense offset arrangements, or whether these arrangements should be addressed in footnotes to the financial statements.[12] In addition, the Commission requested comment whether the amount of any increase in fund expenses to reflect these arrangements should include only amounts that are explicit in the agreement, or should also include amounts implicit in the basic custodian fee.

Most of the commenters addressing this issue supported an adjustment to fund expenses for expense offset arrangements. Commenters generally stated that requiring disclosure for expense offset arrangements would be consistent with requirements relating to brokerage/service arrangements. Commenters were divided, however, on whether the amount of any increase in fund expenses should include only

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[6] As discussed in section II.A.2 below, one of these changes requires funds to reflect as expenses liabilities reduced in connection with certain expense offset arrangements.

[7] Article 6 of Regulation S–X specifies the contents of financial statements included in registration statements, proxy statements and shareholder reports of registered investment companies. Rule 6–07 of Regulation S–X sets forth the requirements for investment company statements of operations.

[8] The staff previously has required funds to disclose in footnotes to the fee table, financial highlights table, and financial statements their participation in brokerage/service arrangements and the effect these arrangements may have on the level of brokerage commissions paid to the fund. *See* Proposing Release, *supra* note 3, at n.2. The amendments to rule 6–07 eliminate the need for this disclosure and therefore the staff will no longer require such footnotes.

[9] The Proposing Release explained that a fund's investment adviser can benefit from brokerage/service arrangements, particularly if a reduction in fund expenses affects the amount of any expense waiver or reimbursement by the adviser. Proposing Release, *supra* note 3, at n.1. Section 17(e)(1) of the 1940 Act [15 U.S.C. 80a–17(e)(1)] makes it unlawful for an affiliated person of a fund (such as its adviser) to accept from any source compensation (other than regular wages) for the purchase or sale of fund shares. The receipt by a fund's adviser of any direct or indirect economic benefit as a result of brokerage/service arrangements would almost certainly violate section 17(e)(1), unless the benefit received fell within the safe harbor provided by section 28(e) of the 1934 Act. *See supra* note 1. However, the Commission believes that if a fund adviser voluntarily imposes a limitation on the fund's expenses or waives its fees, the fund's brokerage/service arrangements would not violate section 17(e)(1). Similarly, if compliance with expense limitations imposed by statute or by contract is measured by reference to the fund's total expenses (*i.e.*, expenses adjusted to include the cost of services provided under brokerage/service arrangements), a fund's brokerage/service arrangements would not result in a violation of section 17(e)(1).

[10] In the Proposing Release, the Commission requested comment on an alternative accounting method that would require funds to allocate each commission paid between execution cost and payment for fund services, and to present their financial statements based upon those allocations. This method would have required funds to separate commissions into brokerage and expense components, and reflect the expense component as an expense in the financial statements. Commenters that addressed the alternative accounting method were uniformly opposed to it on grounds that it would be impractical, costly, and burdensome for funds to calculate, as well as difficult to audit.

[11] Securities lending arrangements may raise other issues under the federal securities laws. The Commission is not addressing in this release the merits of any particular securities lending arrangements.

[12] Footnote disclosure of compensating balance arrangements under which the withdrawal or use of cash or cash items is restricted, either legally or as a practical matter, is currently required by rule 6–04.5 of Regulation S–X [17 CFR 210.6–04.5]. In addition, Rule 6–04.11 of Regulation S–X [17 CFR 210.6–04.11] requires fund balance sheets to state the value of securities loaned and to indicate the nature of collateral received as security for the loan.

amounts that are explicit in agreements between the fund and the service provider.

The amendments to rule 6–07 of Regulation S–X, as adopted, require funds to include as expenses the amount of any reduction in fees or expenses arising from expense offset arrangements.[13] A fund's statement of operations must reflect as the cost of services provided the amount that the fund would have paid in the absence of the expense offset arrangement.[14] The requirement only applies to agreements that provide for specified or reasonably ascertainable fee reductions in exchange for use by another person of the fund's assets. It does not apply to fee reductions that are implicit in the service provider's basic fee.

b. *Foregone Income.* The Commission also requested comment whether funds should be required to estimate income foregone under expense offset arrangements and reflect such amounts in fund financial information.[15] The Commission asked commenters to suggest methods for estimating income foregone under these arrangements. Some commenters supported such a requirement, suggesting that funds should make a ''reasonable estimate'' of foregone income. Other commenters noted the difficulty of estimating lost income and expressed concern that such a requirement could result in misleading financial information. Moreover, one commenter argued that, in order to estimate lost income, a fund would have to assume income, which is inconsistent with generally accepted accounting principles (''GAAP'') and could prevent auditors from issuing an unqualified report that fund financial statements are prepared in accordance with GAAP.

The Commission shares certain of these concerns and has therefore decided not to require funds to reflect in fund financial information income foregone as a result of expense offset arrangements. As amended, rule 6–07 requires a fund that enters into an expense offset arrangement to include in a footnote to financial statements a statement that the fund could have invested the assets used by the other person in an income-producing asset if it had not agreed to a reduction in fees or expenses under an expense offset arrangement.

3. Accounting Method

Under rule 6–07, as amended, a fund's total expenses reported in the statement of operations must include expenses paid under brokerage/service and expense offset arrangements.[16] Total expenses are then reduced by the total amount paid under brokerage/service and expense offset arrangements. The remainder appears on the statement of operations as ''net expenses.''[17] The following example illustrates adjustments to the statement of operations required by the amended rule:

| | |
|---|---|
| Expenses: | |
| Management Fee | $50 |
| [Other direct fund expenses] | 48 |
| Custodian Fee [would include 8 paid by brokers] | 10 |
| Total Expenses | 108 |
| Fees Paid Indirectly[18] | (8) |
| Net Expenses | 100 |

The increase in ''Total Expenses,'' and the offsetting ''Fees Paid Indirectly,'' reflect the amount that the fund would have paid for services in the absence of brokerage/service and expense offset arrangements. If a fund directly negotiates the service provider's fees, the cost of the services for purposes of making the required adjustments is the amount negotiated, presumably the same amount the fund would have paid for the service in the absence of the arrangement. If the fund cannot readily determine the actual cost of such services, *e.g.*, when a broker arranges for the services or provides them itself or through an affiliate, the fund must make a good-faith estimate of the amount it would have paid if it had contracted for the services directly in an arms-length transaction.[19]

4. Financial Statement Note Disclosure

As proposed, the amendments to rule 6–07 would have required a fund to identify separately in a note to the financial statements any expense that the amendments would require to be increased by five percent or more over the amount of the unadjusted expense.[20] Several commenters urged the Commission to require less detailed note disclosure, arguing that shareholders were not interested in individual expense amounts. In response to these concerns, the amended rule requires a fund to state separately in a note to the financial statements the total of expense increases resulting from brokerage/service and expense offset arrangements (which together should be equal to the amount of the ''Fees Paid Indirectly'' line item in the statement of operations). The amended rule also requires a fund to state in the footnote each category of expense that is increased by an amount equal to at least five percent of total expenses.[21]

*B. Exception for Research Services*

As proposed, the requirement to adjust reported expenses to include amounts paid with commission dollars excepted the cost of research services (as that term is used in section 28(e) of the 1934 Act) provided by broker-dealers.[22] Most commenters believed that the exception was appropriate. Many pointed out the difficulties of allocating research received by the adviser among accounts when the brokerage of those accounts is used to acquire the research.[23] Some also asserted that it would be difficult to value research services, particularly when combined with brokerage services, while others objected to

[13] Rule 6–07.2(g)(2) of Regulation S–X [17 CFR 210.6–07.2(g)(2)]. Under the amendments, expense offset arrangements include arrangements under which a service provider reduces its fees in return for the use of fund assets as well as arrangements under which another person, in return for the use of fund assets, makes payment to a fund service provider which in turn reduces its fees charged to the fund.

[14] Amendments to fund registration forms adopted today incorporate similar requirements for fund prospectuses by reference to rule 6–07.

[15] Proposing Release, *supra* note 3, at section II.D.

[16] A fund must also use the total expense figure to calculate its expense ratio, its ''Other Expenses'' listed in the fee table, and its yield. *See infra* sections II.C and II.D.

[17] Because only expenses, and not realized gains/losses or unrealized appreciation/depreciation, are adjusted in the statement of operations, the presentation of ''net expenses'' is necessary to ensure that net investment income is not affected by the adjustment to expenses.

[18] As amended, rule 6–07 requires funds to include a footnote to the financial statements that states separately the total amount of expenses paid through brokerage/service arrangements and the total amount of expenses paid through expense offset arrangements. *See infra* section II.A.4.

[19] The good-faith estimate may be based upon price quotes for the services obtained by the fund or the amount funds of similar size and having similar investment objectives pay for the same services.

[20] Proposing Release, *supra* note 3, at n.12. The amendments, as proposed, would have permitted funds to aggregate amounts that individually were less than five percent of the unadjusted expense and required funds to state the total of these amounts.

[21] The five percent threshold is consistent with an existing provision of rule 6–07 that requires funds to state separately expense items that exceed five percent of the total expenses shown in the statement of operations. Rule 6–07.2(b) [17 CFR 210.6–07.2(b)].

[22] *See supra* note 1. Because research services are typically provided to the adviser, not the fund, the specific exception may be unnecessary. In light of the widespread use of research soft dollar arrangements, however, the Commission is adopting a specific exception.

[23] Twenty commenters expressly opposed allocation of research on an account-specific basis, stating that such a requirement would be burdensome (with no corresponding benefit to investors), costly, arbitrary or impossible.

making assumptions about the value of research services.

A minority of commenters supported the additional disclosure of research soft dollar practices. These commenters expressed concern that such practices pose the same hidden expense problems as brokerage/service arrangements, and that such practices may be more likely to raise conflicts of interest than brokerage/service arrangements. None of the commenters, however, suggested a feasible approach for valuing [24] or allocating [25] research services for purposes of disclosure. Because of the practical difficulties of valuing and allocating research services, the amendments except the cost of research services from the requirement to gross up fund expenses.[26]

### C. Fee Table and Financial Highlights Table

The Commission also proposed amendments to the instructions to items of fund registration forms that require funds to include in their prospectuses a table presenting the expenses paid by fund shareholders, either directly or out of the assets of the fund (the ''fee table'').[27] Most commenters supported these amendments and the Commission is adopting them as proposed.

The amended instructions require that expense percentages included in a fund's fee table be based upon total expenses (i.e., expenses that include amounts paid in connection with brokerage/service arrangements and expense offset arrangements). Similarly, the ''ratio of expenses to average net assets'' (''expense ratio'') in a fund's financial highlights table must reflect total expenses.[28] Funds must also include a footnote to the financial highlights table disclosing the change in the manner in which expenses have been determined.

### D. Yield

The Commission is adopting, substantially as proposed, amendments to the instructions to yield formulas for funds (other than money market funds) that require a fund to include the cost of services paid with brokerage commissions in yield quotations appearing in the fund's registration statement and, as a result, in its advertisements.[29] The amended instructions require funds to estimate amounts paid with commission dollars for the period of the yield quotation.[30] A majority of commenters addressing this proposal expressed support for the requirement. These commenters stated that the proposed requirement would prevent funds from overstating yield and would be consistent with the Commission's objective of enhancing investors' ability to compare expenses and yields among funds.[31]

The amendments do not require funds to adjust yield calculations to reflect expense offset arrangements. Because the formula for calculating yield requires funds to reduce income by expenses,[32] any increase in expenses to reflect expense offset arrangements would require a corresponding increase in income by an estimate of income foregone as a result of the arrangement. As discussed above, the amendments do not require estimates of foregone income in the statement of operations. Moreover, because expense offset arrangements generally reduce both income and expenses by similar amounts, reflection of (or failure to reflect) these arrangements in calculation of fund yield should have a minimal effect on the reported yield.

### E. Average Commission Rates

The Commission proposed to require funds to disclose the average commission rate paid by a fund in the financial highlights table next to the portfolio turnover rate. Brokerage commissions and other costs incurred in connection with the execution of a fund's portfolio transactions are not reflected in the fund's statement of operations, financial highlights table, or fee table because these costs are treated as capital items that increase the cost of securities purchased or reduce the proceeds of securities sold. The Commission was concerned that funds may not provide adequate information about these costs to investors,[33] particularly in light of the fact that these costs can reflect the cost of research and other benefits the fund adviser may receive in connection with its direction of fund brokerage.[34]

Most fund industry commenters opposed the proposal, asserting that disclosure of average commission rates either would not be meaningful or would be confusing for most investors because average commission rates do not reflect spreads and quality of execution. Furthermore, they argued, factors affecting commission rates, such as the size of the order, the market in which the security trades, and the

[24] One commenter recommended that fund advisers be required to make a good faith estimate of what soft dollar research would have cost in an arms-length transaction. This approach, however, would require fund advisers to report positive values for unsolicited and unused research, which could distort fund expenses if receipt of the research was incidental to brokerage direction decisions made wholly on the basis of the broker's execution capabilities. In addition, good faith estimates may be difficult to make if the services provided are unlike those available for hard dollars.

[25] One commenter recommended that expenses incurred on behalf of more than one fund be allocated in accordance with written formulas approved by the board of directors of each fund. While it is possible that a board of directors may be in a position to provide guidance to an adviser in allocating the cost or value of research among series of a series fund or among funds having a common board of directors, it is unlikely that a board would be in such a position with respect to other clients of the adviser.

[26] The Commission recently proposed new disclosure requirements for soft-dollar practices. Investment Advisers Act Rel. No. 1469 (Feb. 14, 1995) [60 FR 9750 (Feb. 21, 1995)] (''Adviser Soft Dollar Release''). The Commission requested comment on the valuation issue in the Adviser Soft Dollar Release. If the comments received in response to the Adviser Soft Dollar Release suggest a feasible way to address these issues without imposing burdens that outweigh the benefits of disclosure, the Commission may reconsider the exception for research services provided in the amendments adopted today.

[27] Item 2(a)(i) of Form N–1A, Item 3.1 of Form N–2, Item 3(a) of Form N–3, and Item 3(a) of Form N–4.

[28] Item 3(a) of Form N–1A and Item 4.1 of Form N–2. The Commission did not propose amendments to the per share tables in Forms N–3 and N–4.

[29] Paragraph (e)(1) of rule 482 under the 1933 Act [17 CFR 230.482(e)(1)] requires that yield quotations included in fund advertisements be calculated in accordance with the formulas specified in fund registration forms. The yield formulas are set forth in Item 22(b)(ii) of Form N–1A, Item 25(b)(ii) of Form N–3, and Item 21(b)(ii) of Form N–4.

[30] The amendments to Regulation S–X require funds to adjust expenses at the end of a financial statement period, but generally would not require funds to accrue or otherwise determine at the end of the 30-day period for which yield is calculated the amount of expenses paid with brokerage commissions for that period.

[31] The amendments do not revise the manner in which yield is calculated by money market funds. The money market fund yield formula is based upon the net change in the value of a hypothetical account, and any spread or mark-up paid by a fund is amortized and reflected in that change in value. *See, e.g.*, Item 22(a) of Form N–1A. Therefore, requiring money market funds to include fees paid with commission dollars in the calculation of yield would result in those fees being counted twice. The same double-counting problem does not arise with respect to non-money market funds because the yield formula for those funds generally requires that the amortization of premium and accretion of discount on debt securities be based upon the market value of the security, rather than the initial purchase price. *See, e.g.*, Instruction 1(a) to Item 22(b)(ii) of Form N–1A. The mark-up or spread paid by the fund upon the purchase of a security is not reflected in the security's market value and therefore would not be a part of any premium amortized or discount accreted for the purposes of calculating yield. Only two commenters addressed the question of revising the yield formula for money market funds. Both of these commenters agreed with the Commission's analysis of the effect of brokerage/service arrangements on money market fund yield, and both were opposed to such revisions.

[32] *See, e.g.* Item 22(b)(ii) of Form N–1A.

[33] A fund is required to disclose in its Statement of Additional Information the aggregate amount of brokerage commissions it paid to fund affiliates during its three most recent fiscal years. Item 17(b) of Form N–1A.

[34] *See supra* notes 1 and 2.

nature of the brokerage firm capital commitment to the trade, would preclude any useful comparison between funds. Other commenters expressed concern that requiring funds to disclose average commission rates would induce funds to place undue emphasis on lower commission rates rather than quality of execution.

The Commission believes that disclosure of average commission rates can improve investors' ability to evaluate and compare fund brokerage costs, and is adopting the requirement as proposed. While many factors may affect commission rates, many similar factors affect other fund costs. The Commission believes that a comparison of average commission rates among funds will be a useful bench-mark for investors and therefore is adopting the disclosure requirement substantially as proposed.[35]

One commenter urged the Commission to exclude from the requirement to disclose average commission rates funds that have a *de minimis* amount of transactions on which brokerage commissions are paid. Because commission rate information may have limited value in such circumstances, the Commission has adopted an exclusion for funds that, during any fiscal year, invest on average less than ten percent of their net assets in equity securities on which commissions are charged on trades.[36]

*F. Effective Date*

The amendments are effective September 1, 1995. All funds may elect to comply with the amendments before the effective date or before the compliance dates described below.

*G. Compliance Dates*

1. Registration Statements

a. *Current Registrants.* Registered investment companies must amend their registration statements to comply with the rule amendments no later than the next post-effective amendment updating financial statements pursuant to section 10(a)(3) of the 1933 Act to reflect information for fiscal years *ending* on or after the effective date.[37] Information regarding average commission rates, however, must be provided only for fiscal years *beginning* on or after the effective date.[38]

b. *New Registrants.* Funds with registration statements effective on or after the effective date of these rule amendments must first reflect these rule amendments in financial information contained in post-effective amendments filed thereafter.

2. Yield Information

Yield quotations appearing in fund advertisements or other sales literature published or distributed on or after December 1, 1995 must be calculated in accordance with the rule amendments.

3. Proxy Statements and Shareholder Reports

Financial information covering fiscal years ending on or after the effective date contained in proxy statements and shareholder reports filed with the Commission must comply with the amendments.

*H. Filing Requirements for Post-Effective Amendments*

Post-effective amendments to fund registration statements made for purpose of complying with these rule amendments may be made pursuant to the immediate effectiveness provisions of rule 485(b) under the 1940 Act [17 CFR 230.485(b)], provided that the post-effective amendment otherwise meets the conditions for immediate effectiveness under that rule.

## III. Cost/Benefit Analysis

The rule and form changes adopted today are intended to improve the reporting of investment company expenses and the ability of investors to compare investment company expenses and yield. While these amendments may increase the cost to funds of preparing financial statements and registration materials, the Commission believes that any such cost increases would, at most, be minimal. A fund that has brokerage/service or expense offset arrangements is required to add two captions and a footnote to its statement of operations and replace the net expense figures currently disclosed in its fee table and financial highlights table with total expense figures. Funds generally should be readily able to determine these figures. Commenters on the proposal stated that funds should also be readily able to estimate expenses paid with brokerage commissions for purposes of yield calculations. Thus, the Commission believes that the costs of the amendments will not be significant and will be substantially outweighed by the benefits to investors of receiving more accurate and useful financial information about funds.

## IV. Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. No comments were received on this analysis. The Commission has prepared a final Regulatory Flexibility Analysis, a copy of which may be obtained by contacting Karen J. Garnett, Office of Disclosure and Investment Adviser Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549.

## V. Statutory Authority

The Commission is amending rule 6–07 of Regulation S–X and the various fund registration forms under the authority of section 7 of the 1933 Act [15 U.S.C. 77g] and sections 8 and 38(a) of the 1940 Act [15 U.S.C. 80a–8, 80a–37(a)]. The authority citations for the rule and form amendments precede the text of the amendments.

## Text of Rule and Form Amendments

### List of Subjects

*17 CFR Part 210*

Accounting, Reporting and recordkeeping requirements, Securities.

*17 CFR Parts 239 and 274*

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Chapter II, Title 17 of the Code of Federal Regulations is amended as follows:

## PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

[35] The Commission has added instructions to the various fund registration forms describing the method for calculating average commission rate. Instruction 17 to Item 3 of Form N–1A, and Instruction 19 to Item 4 of Form N–2. The instruction requires funds to compute the average commission rate paid by dividing the total dollar amount of commissions paid during the fiscal year by the total number of shares purchased and sold during the fiscal year for which commissions were charged. Funds must convert commissions paid in foreign currencies into US dollars and cents per share. Mark-ups, Mark-downs, and spreads on shares traded on a principal basis are not included in the average commission rate figure unless they are disclosed on confirmations prepared in accordance with rule 10b–10 under the 1934 Act [17 CFR 240.10b–10].

[36] Instruction 16 to Item 3 of Form N–1A, and Instruction 18 to Item 4 of Form N–2.

[37] The financial highlights table in fund prospectuses presents financial data for each of the last ten fiscal years. The amendments do not require funds to reflect total expenses in the expense ratio of the financial highlights table for fiscal years ending before the effective date.

[38] This requirement is consistent with the Commission's proposal. *See* Proposing Release, *supra* note 3, at n.30.

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37a, unless otherwise noted.

2. By adding paragraph 2.(g) to the Statements of Operations § 210.6–07 to read as follows:

**§ 210.6–07 Statements of operations.**

* * * * *

2. *Expenses.* * * *

(g)(1) *Brokerage/Service Arrangements.* If a broker-dealer or an affiliate of the broker-dealer has, in connection with directing the person's brokerage transactions to the broker-dealer, provided, agreed to provide, paid for, or agreed to pay for, in whole or in part, services provided to the person (other than brokerage and research services as those terms are used in section 28(e) of the Securities Exchange Act of 1934 [15 U.S.C. 78bb(e)]), include in the expense items set forth under this caption the amount that would have been incurred by the person for the services had it paid for the services directly in an arms-length transaction.

(2) *Expense Offset Arrangements.* If the person has entered into an agreement with any other person pursuant to which such other person reduces, or pays a third party which reduces, by a specified or reasonably ascertainable amount, its fees for services provided to the person in exchange for use of the person's assets, include in the expense items set forth under this caption the amount of fees that would have been incurred by the person if the person had not entered into the agreement.

(3) *Financial Statement Presentation.* Show the total amount by which expenses are increased pursuant to paragraphs (1) and (2) of this paragraph 2.(g) as a corresponding reduction in total expenses under this caption. In a note to the financial statements, state separately the total amounts by which expenses are increased pursuant to paragraphs (1) and (2) of this paragraph 2.(g), and list each category of expense that is increased by an amount equal to at least 5 percent of total expenses. If applicable, the note should state that the person could have employed the assets used by another person to produce income if it had not entered into an arrangement described in paragraph 2.(g)(2) of this section.

* * * * *

## PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

## PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

3. The authority citation for Part 239 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

4. The authority citation for Part 274 continues to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

**Note:** The text of Form N–1A does not and the amendments will not appear in the Code of Federal Regulations.

5. By revising the introductory text of Instruction 10 to Item 2(a)(i) in Part A of Form N–1A (referenced in §§ 239.15A and 274.11A) to read as follows:

**Form N–1A**

* * * * *

**Part A—Information Required in a Prospectus**

* * * * *

**Item 2. Synopsis**

(a)(i) * * *

*Instructions:* * * *

10. ''Other Expenses'' includes all expenses (except nonrecurring account fees and expenses reported in other items of the table) that are deducted from fund assets or charged to all shareholder accounts. The amounts of expenses deducted from fund assets are the amounts shown as expenses in the Registrant's statement of operations (including increases resulting from complying with paragraph 2(g) of Rule 6–07 [17 CFR 210.6–07] of Regulation S–X).

* * * * *

6. By amending Item 3(a) in Part A of Form N–1A (referenced in §§ 239.15A and 274.11A) by adding the phrase ''Average Commission Rate Paid'' below ''Portfolio Turnover Rate'', by redesignating Instructions 13 and 14 as Instructions 14 and 15, and adding Instructions 13, 16, and 17 to read as follows:

**Form N–1A**

* * * * *

**Part A—Information Required in a Prospectus**

* * * * *

**Item 3. Condensed Financial Information**

(a) * * *

*Instructions:*

* * * * *

*Ratios/Supplemental Data*

* * * * *

13. Compute the ''ratio of expenses to average net assets'' using the amount of expenses shown in the Registrant's statement of operations for the relevant fiscal year, including increases resulting from complying with paragraph 2(g) of Rule 6–07 [17 CFR 210.6–07] of Regulation S–X, and including reductions resulting from complying with paragraphs 2(a) and (f) of Rule 6–07 regarding fee waivers and reimbursements. If a change in the methodology for determining the ratio of expenses to average net assets results from applying paragraph 2(g) of Rule 6–07, explain in a note that the ratio reflects fees paid with brokerage commissions and fees reduced in connection with specific agreements only for fiscal years ending after September 1, 1995.

* * * * *

*Average Commission Rate Paid*

16. A Registrant that invests not more than ten percent of the value of its average net assets in equity securities on which commissions are charged on trades may omit ''average commission rate paid.'' Compute average net assets based on amounts invested at the end of each fiscal quarter.

17. Compute the ''average commission rate paid'' as follows: (A) divide the total dollar amount of commissions paid during the fiscal year by (B) the total number of shares purchased and sold during the fiscal year for which commissions were charged. Carry the amount of the average commission rate paid to no fewer than four decimal places. Convert commissions paid in foreign currency into U.S. dollars and cents per share using consistently either the prevailing exchange rate on the date of the transaction or average exchange rate over such period as related transactions took place. Do not include mark-ups, mark-downs, or spreads paid on shares traded on a principal basis unless such mark-ups, mark-downs, or spreads are disclosed on confirmations prepared in accordance with rule 10b–10 under the 1934 Act [17 CFR 240.10b–10].

* * * * *

7. By redesignating Instructions 7 and 8 to Item 22(b)(ii) as Instructions 8 and 9, and adding Instruction 7 to Item 22(b)(ii) in Part B of Form N–1A

(referenced in §§ 239.15A and 274.11A) to read as follows:

**Form N–1A**

* * * * *

**Part B—Information Required in a Statement of Additional Information**

* * * * *

**Item 22. Calculation of Performance Data**

* * * * *

(b) *Other Registrants* * * *

(ii) *Yield.* * * *

*Instructions:* * * *

7. If a broker-dealer or an affiliate (as defined in paragraph (b) of Rule 1–02 [17 CFR 210.1–02(b)] of Regulation S–X) of the broker-dealer has, in connection with directing the Registrant's brokerage transactions to the broker-dealer, provided, agreed to provide, paid for, or agreed to pay for, in whole or in part, services provided to the Registrant (other than brokerage and research services as those terms are used in Section 28(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(e))), add to expenses accrued for the period an estimate of additional amounts that would have been accrued for the period if the Registrant had paid for the services directly in an arms-length transaction.

* * * * *

**Note:** The text of Form N–2 does not and the amendments will not appear in the Code of Federal Regulations.

8. By revising Instruction 9 to Item 3.1 in Part A of Form N–2 (referenced in §§ 239.14 and 274.11a–1) to read as follows:

**Form N–2**

* * * * *

**Part A—Information Required in a Prospectus**

* * * * *

**Item 3. Fee Table and Synopsis**

1. * * *

*Instructions* * * *

9. ''Other Expenses'' includes all expenses (except fees and expenses reported in other items in the table) that are deducted from the Registrant's assets and will be reflected as expenses in the Registrant's statement of operations (including increases resulting from complying with paragraph 2(g) of Rule 6–07 [17 CFR 210.6–07] of Regulation S–X).

* * * * *

9. By amending Item 4.1 in Part A of Form N–2 (referenced in §§ 239.14 and 274.11a–1) by adding ''*l.* Average Commission Rate Paid'' below ''k. Portfolio Turnover Rate'', by redesignating Instruction 16 as Instruction 17, and adding Instructions 16, 18 and 19 to read as follows:

**Form N–2**

* * * * *

**Part A—Information Required in a Prospectus**

* * * * *

**Item 4. Financial Highlights**

1. *General* * * *

*Instructions* * * *

*Ratios and Supplemental Data* * * *

16. Compute the ''ratio of expenses to average net assets'' using the amount of expenses shown in the Registrant's statement of operations for the relevant fiscal year, including increases resulting from complying with paragraph 2(g) of Rule 6–07 [17 CFR 210.6–07] of Regulation S–X, and including reductions resulting from complying with paragraphs 2(a) and (f) of Rule 6–07 regarding fee waivers and reimbursements. If a change in the methodology for determining the ratio of expenses to average net assets results from applying paragraph 2(g) of Rule 6–07, explain in a note that the ratio reflects fees paid with brokerage commissions and fees reduced in connection with specific agreements only for fiscal years ending after September 1, 1995.

* * * * *

*Average Commission Rate Paid*

18. A Registrant that invests not more than ten percent of the value of its average net assets in equity securities on which commissions are charged on trades may omit ''average commission rate paid.'' Compute average net assets based on amounts invested at the end of each fiscal quarter.

19. Compute the ''average commission rate paid'' as follows: (A) divide the total dollar amount of commissions paid during the fiscal year by (B) the total number of shares purchased and sold during the fiscal year for which commissions were charged. Carry the amount of the average commission rate paid to no fewer than four decimal places. Convert commissions paid in foreign currency into U.S. dollars and cents per share using consistently either the prevailing exchange rate on the date of the transaction or average exchange rate over such period as related transactions took place. Do not include mark-ups, mark-downs, or spreads paid on shares traded on a principal basis unless such mark-ups, mark-downs, or spreads are disclosed on confirmations prepared in accordance with rule 10b–10 under the 1934 Act [17 CFR 240.10b–10].

* * * * *

**Note:** The text of Form N–3 does not and the amendments will not appear in the Code of Federal Regulations.

10. By revising the introductory text of Instruction 15 to Item 3(a) in Part A of Form N–3 (referenced in §§ 239.17a and 274.11b) to read as follows:

**Form N–3**

* * * * *

**Part A—Information Required in a Prospectus**

* * * * *

**Item 3. Synopsis**

(a) * * *

*Instructions:* * * *

15. ''Other Expenses'' includes all expenses (except fees and expenses reported in other items in the table) that are deducted from separate account assets and will be reflected as expenses in the Registrant's statement of operations (including increases resulting from complying with paragraph 2(g) of Rule 6–07 [17 CFR 210.6–07] of Regulation S–X).

* * * * *

11. By redesignating Instruction 7 to Item 25(b)(ii) as Instruction 8, and adding Instruction 7 to Item 25(b)(ii) in Part B of Form N–3 (referenced in §§ 239.17a and 274.11b) to read as follows:

**Form N–3**

* * * * *

**Part B—Information Required in a Statement of Additional Information**

* * * * *

**Item 25. Calculation of Performance Data**

* * * * *

(b) *Other Accounts* * * *

(ii) *Yield.* * * *

*Instructions:* * * *

7. If a broker-dealer or an affiliate (as defined in paragraph (b) of Rule 1–02 [17 CFR 210.1–02(b)] of Regulation S–X) of the broker-dealer has, in connection with directing the Registrant's brokerage transactions to the broker-dealer, provided, agreed to provide, paid for, or agreed to pay for, in whole or in part, services provided to the Registrant (other than brokerage and research services as those terms are used in Section 28(e) of the Securities Exchange Act of 1934 [15 U.S.C. 78bb(e)]), add to expenses accrued for the period an estimate of additional amounts that would have been accrued for the period if the Registrant had paid for the

services directly in an arms-length transaction.

* * * * *

**Note:** The text of Form N–4 does not and the amendments will not appear in the Code of Federal Regulations.

12. By revising the introductory text of Instruction 17 to Item 3(a) in Part A of Form N–4 (referenced in §§ 239.17b and 274.11c) to read as follows:

**Form N–4**

* * * * *

**Part A—Information Required in a Prospectus**

* * * * *

**Item 3. Synopsis**

(a) * * *

*Instructions:* * * *

17. ''Other Expenses'' includes all expenses (except management fees) that are deducted from portfolio company assets. The amounts of expenses are the amounts shown as expenses in the portfolio company's statement of operations (including increases resulting from complying with paragraph 2(g) of Rule 6–07 [17 CFR 210.6–07] of Regulation S–X).

* * * * *

13. By redesignating Instructions 2 and 3 to Item 21(b)(ii) as Instructions 3 and 4, and adding Instruction 2 to Item 21(b)(ii) in Part B of Form N–4 (referenced in §§ 239.17b and 274.11c) to read as follows:

**Form N–4**

* * * * *

**Part B—Information Required in a Statement of Additional Information**

* * * * *

**Item 21. Calculation of Performance Data**

* * * * *

(b) *Other Sub-Accounts* * * *

(ii) *Yield.* * * *

*Instructions:* * * *

2. If a broker-dealer or an affiliate (as defined in paragraph (b) of Rule 1–02 [17 CFR 210.1–02(b)] of Regulation S–X) of the broker-dealer has, in connection with directing the portfolio company's brokerage transactions to the broker-dealer, provided, agreed to provide, paid for, or agreed to pay for, in whole or in part, services provided to the portfolio company (other than brokerage and research services as those terms are used in Section 28(e) of the Securities Exchange Act of 1934 [15 U.S.C. 78bb(e)]), add to expenses accrued for the period an estimate of additional amounts that would have been accrued for the period if the portfolio company had paid for the services directly in an arms-length transaction.

* * * * *

Dated: July 21, 1995.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–18472 Filed 7–27–95; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Friday
July 28, 1995

## Part IV

# Department of the Interior

**Bureau of Indian Affairs**

**25 CFR Chapter I**

**Indian Self-Determination Negotiated Rulemaking Committee Meeting; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**25 CFR Chapter 1**

## Meeting of the Indian Self-Determination Negotiated Rulemaking Committee

**AGENCY:** Bureau of Indian Affairs, Interior; Indian Health Service, HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** The Secretary of the Interior (DOI) and the Secretary of Health and Human Services (DHHS) have established an Indian Self-Determination Negotiated Rulemaking Committee (Committee) to negotiate and develop a proposed rule implementing the Indian Self-Determination and Education Assistance Act (ISDEAA), as amended.

The Departments have determined that the establishment of this Committee is in the public interest and will assist the agencies in developing regulations authorized under section 107 of the ISDEAA. The agenda planned for the week include meetings of workgroups as well as the full committee. Workgroups will be finalizing draft regulatory language and recommending adoption by the full committee. The full committee will review and give approval of such language for publication in the **Federal Register**, as a Notice of Proposed Rulemaking.

**DATES:** The Committee and appropriate workgroups will meet on the following days beginning at approximately 8:30 am and ending at approximately 5:00 pm on each day: Tuesday, August 8, Wednesday, August 9, Thursday, August 10, and Friday, August 11.

**ADDRESSES:** All meetings August 8 through August 11, 1995, will be held at the: Silver Legacy, 407 N. Virginia Street, Reno, Nevada 89501. Tel.: (702) 329–4777

(Workgroups will also be meeting at the same location.)

Written statements may be submitted to Mr. James J. Thomas, Chief, Division of Self-Determination Services, Bureau of Indian Affairs, 1849 C Street, NW, MS: 4627–MIB, Washington, DC 20240, telephone (202) 208–3708.

**FOR FURTHER INFORMATION CONTACT:**

Mr. James J. Thomas, Chief, Division of Self-Determination Services, Bureau of Indian Affairs, 1849 C Street NW., MS: 4627–MIB, Washington, DC 20240, telephone (202) 208–3708

or

Mrs. Merry Elrod, Acting Director, Division of Self-Determination, Indian Health Service, 5600 Fishers Lane, Parklawn Building, Room 6A–05, Rockville, MD 20857, telephone (301) 443–1044.

**SUPPLEMENTARY INFORMATION:** The location and dates of future meetings will be published in the **Federal Register**. The meetings will be open to the public without advanced registration.

Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits and file written statements with the Committee for its consideration. Written statements should be submitted to the address listed above. Summaries of Committee meetings will be available for public inspection and copying ten days following each meeting at the same address. In addition, the materials received to date during the input sessions are available for inspection and copying at the same address.

Dated: July 25, 1995.

**Ada E. Deer,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 95–18641 Filed 7–27–95; 8:45 am]

**BILLING CODE 4310–02–M**

Friday
July 28, 1995

# Part V

# Federal Trade Commission

**16 CFR Parts 801 and 802**

**Premerger Notification; Reporting and Waiting Period Requirements; Proposed Rule**

**FEDERAL TRADE COMMISSION**

**16 CFR Parts 801 and 802**

## Premerger Notification; Reporting and Waiting Period Requirements

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** This notice proposes amendments to the premerger notification rules that require the parties to certain mergers or acquisitions to file reports with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice and to wait a specified period of time before consummating such transactions. The reporting and waiting period requirements are intended to enable these enforcement agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation.

This notice seeks comments on five proposed rules that would define or create exemptions to the requirements imposed by the act. These proposed rules have been developed to clarify the types of transactions that are in the ordinary course of business of the parties to the transaction and are exempt under section 7A(c)(1) of the Hart-Scott-Rodino-Act. They also provide several new exemptions under section 7A(d)(2)(B) for certain types of acquisitions of realty and carbon-based mineral reserves that appear unlikely to violate the antitrust laws. These proposed rules are designed to reduce the compliance burden on the business community by eliminating the application of the notification and waiting requirements to a significant number of transactions that, in most cases, are unlikely to violate the antitrust laws. They will also allow the enforcement agencies to focus their resources more effectively on those transactions that present the potential for competitive harm.

**DATES:** Comments must be received on or before September 29, 1995.

**ADDRESSES:** Written comments should be submitted to both (1) the Secretary, Federal Trade Commission, Room 136, Washington, DC 20580, and (2) the Assistant Attorney General, Antitrust Division, Department of Justice, Room 3214, Washington, DC 20530.

**FOR FURTHER INFORMATION CONTACT:** Melea R. Epps, Attorney, or John M. Sipple, Jr., Assistant Director, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–3100.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Flexibility Act

The proposed amendments to the Hart-Scott-Rodino premerger notification rules are designed to reduce the burden of reporting on the public. The Commission has determined that none of the proposed rules is a major rule, as that term is defined in Executive Order 12291. The amendments will not result in any of the following: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in the domestic market. None of the amendments expands the coverage of the premerger notification rules in a way that would affect small business. Therefore, pursuant to section 605(b) of the Administrative Procedure Act, 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354 (September 19, 1980), the Federal Trade Commission has certified that these rules will not have a significant economic impact on a substantial number of small entities. Section 603 of the Administrative Procedure Act, 5 U.S.C. 603, requiring a final regulatory flexibility analysis of these rules, is therefore inapplicable.

### Background

Section 7A of the Clayton Act (''the act''), 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires parties to certain acquisitions of assets or voting securities to give advance notice to the Federal Trade Commission (hereafter referred to as ''the Commission'') and the Assistant Attorney General of the Antitrust Division of the Department of Justice (hereafter referred to as ''the Assistant Attorney General''). The parties must then wait certain designated periods before the consummation of such acquisitions. The transactions to which the advance notice requirement is applicable and the length of the waiting period required are set out respectively in subsections (a) and (b) of section 7A. This amendment to the Clayton Act does not change the standards used in determining the legality of mergers and acquisitions under the antitrust laws.

The legislative history suggests several purposes underlying the act. Congress wanted to ensure that certain acquisitions were subjected to meaningful scrutiny under the antitrust laws prior to consummation. To this end, Congress intended to eliminate the ''midnight merger'' which is negotiated in secret and announced just before, or sometimes only after, the closing takes place. Congress also provided an opportunity for the Commission or the Assistant Attorney General (who are sometimes hereafter referred to as the ''antitrust agencies'' or the ''enforcement agencies'') to seek a court order enjoining the completion of those transactions that either agency determines would present significant antitrust problems. Finally, Congress sought to facilitate an effective remedy when a challenge by one of the enforcement agencies proved successful. Thus, the act requires that the antitrust agencies received prior notification of certain acquisitions, provides tools to facilitate a prompt, thorough investigation of the competitive implications of these acquisitions, and assures the enforcement agencies an opportunity to seek a preliminary injunction before the parties to an acquisition are legally free to consummate it. The problem of unscrambling the assets after the transaction has taken place is thereby reduced.

Subsection 7A(d)(1) of the act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, to require that the notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Subsection 7A(d)(2) of the act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority to (a) define the terms used in the act, (b) exempt from the act's notification and waiting period requirements additional classes of persons or transactions which are not likely to violate the antitrust laws, and (c) prescribe such other rules as may be necessary and appropriate to carry out the purposes of section 7A.

The Commission, with the concurrence of the Assistant Attorney General, promulgated implementing rules (''the rules'') and the Notification and Report Form (the ''Form'') and issued an accompanying Statement of

Basis and Purpose, all of which were published in the **Federal Register** of July 31, 1978, 43 FR 33451, and became effective on September 5, 1978.

The rules are divided into three parts which appear at 16 CFR parts 801, 802, and 803. Part 801 defines a number of the terms used in the act and rules, and explains which acquisitions are subject to the reporting and waiting period requirements. Part 802 contains a number of exemptions from these requirements. Part 803 explains the procedures for complying with the act. The Form, which is completed by persons required to file notification, is an appendix to part 803 of the rules.

Changes of a substantive nature have been made in the premerger notification rules or Form on ten occasions since they were first promulgated: 44 FR 66781 (November 21, 1979); 45 FR 14205 (March 5, 1980); 46 FR 38710 (July 29, 1981); 48 FR 34427 (July 29, 1983); 50 FR 38742 (September 24, 1985); 51 FR 10368 (March 28, 1986); 52 FR 7066 (March 6, 1987); 52 FR 20058 (May 29, 1987); 54 FR 21425 (May 18, 1989) and 55 FR 31371 (August 2, 1990).

The current set of proposed changes to the rules interprets the act and expands the current policies of the Commission's Premerger Notification Office regarding transactions in the ordinary course of business that are exempt from the notification and waiting requirements of the act. The proposals also include several new exemptions for acquisitions of certain types of real property assets and carbon-based mineral reserves. The Commission, as part of its ongoing review of the rules, invites interested persons to submit comments on these proposed rules and the Statement of Basis and Purpose.

**Statement of Basis and Purpose for the Commission's Proposed Revisions to the Premerger Notification Rules**

Proposed §§ 802.1, 802.2, 802.3, 802.4, and 802.5 describe certain types of acquisitions that would be exempt from the notification requirements of the act. They would replace and expand existing § 802.1, which describes certain applications of the exemption granted by section 7A(c)(1) of the act for acquisitions of goods or realty in the ordinary course of business. Proposed revisions to § 801.15 would define when the aggregation rules apply to acquisitions covered by these newly proposed rules.

In 1985, the Commission proposed three new provisions under part 802. Previously proposed § 802.1 would have addressed the statutory ''ordinary course of business'' exemption; previously proposed § 802.2 would have exempted certain acquisitions of unimproved land, office buildings and residential properties; and previously proposed § 802.3 would have exempted certain acquisitions of carbon-based mineral reserves.

In response to the 1985 notice of proposed rulemaking, the Commission received twenty comments that focused wholly or in part on the then proposed §§ 802.1, 802.2, and 802.3. The persons who commented are listed in the **Federal Register** of March 6, 1987, 52 FR 7066. The comments are available for public inspection in the Federal Trade Commission's Public Reference Room, Reference number 223.2.1–1–E and F.

On March 23, 1995, the Chairman of the Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice jointly announced eight initiatives for review of transactions under the act. One of the initiatives is a reduction in the number of filings received pursuant to the act. A draft of several revisions to the Hart-Scott-Rodino rules under consideration by the staff of the Commission's Premerger Notification Office (PNO) was made available to the public. Those revisions would eliminate the necessity to file premerger notification for certain transactions that are not likely to violate the antitrust laws. The draft reflected careful consideration by the staff of the comments received in response to the 1985 proposals, the experience of the PNO during the intervening years in its determinations of the reportability of a large number of transactions not specifically exempted by the act or the rules an the experience of the enforcement agencies in conducting their antitrust review of premerger filings.

Included in the March 23 draft was a series of questions to be considered in determining whether the revisions under consideration by the PNO effectively exempted transactions that were unlikely to violate the antitrust laws and facilitated uncomplicated application of the rules. In response to an invitation for comment, the staff of the Commission received extensive input from the private antitrust bar and worked closely with the Department of Justice to address the questions raised in the draft. As a result, the draft revisions were reformulated significantly to enhance their effectiveness in exempting classes of transactions that are unlikely to create competitive problems, while ensuring that the enforcement agencies continue to receive notification of classes of acquisitions that are more likely to present potential antitrust concerns. The Commission now formally proposes the following amendments to the premerger notification rules.

*Criteria for the Rules.* Section 7A(c)(1) of the act exempts ''acquisitions of goods or realty transferred in the ordinary course of business.'' Existing § 802.1(a) interprets this statutory language to apply the exemption to acquisitions of voting securities of entities holding only realty. Existing § 802.1(b) denies the exemption to the sale of goods or real property if they constitute ''all or substantially all of the assets of that entity or an operating division thereof'' unless the entity qualifies for the exemption under existing § 802.1(a) because its assets consist solely of real property and assets incidental to the ownership of real property.

The reportability of transfers in the ordinary course of business has long been a frequent source of questions from the public. Proposed § 802.1 represents interpretations of section 7A(c)(1) made by the PNO over the years, and it also broadens these interpretations to exempt additional classes of acquisitions that are unlikely to violate the antitrust laws.

Proposed § 802.1(a) preserves the concept of existing § 802.1(b) and makes the exemption unavailable for acquisitions of all or substantially all of the assets of an operating unit. Operating unit is defined as assets operated by the acquired person as a business undertaking in a particular area or for particular products or services. The sale of all or substantially all of the assets of a business is generally equivalent to the sale of a business enterprise. Although it is possible that the effects of selling capacity might be to enhance competition, it can also diminish competition, and each acquisition must be judged individually. The current and proposed rules therefore require generally that acquisitions that transfer the equivalent of a business remain subject to the prior notification obligations of the act.

Proposed § 802.1 also defines categories of acquisitions of goods that are deemed to be in the ordinary course of business and are therefore exempt from the notification requirements. Individual review of such transactions is typically unnecessary because selling goods is the essence of manufacturing, wholesaling, and retailing businesses. Sales in the ordinary course of business should not in any way diminish the capacity of the selling firm to compete.

Proposed § 802.1 provides that certain acquisitions of used durable goods qualify for exemption from the reporting requirements as transfers of goods in the ordinary course of business. These exemptions for specific types of acquisitions of used durable goods acknowledge that certain transfers of productive assets are made in the ordinary course to increase or upgrade capacity and to improve efficiencies. However, the ordinary course of business exemption generally will not reach other acquisitions involving productive capacity. The Commission invites comment regarding other types of transfers of productive assets, especially those not involving operating units, that may qualify for the ordinary course of business exemption.

Proposed § 802.2 (concerning real property assets) and proposed § 802.3 (concerning carbon-based mineral reserves and rights) are based, for the most part, on the Commission's authority in section 7A(d)(2)(B) of the act to exempt transactions that are unlikely to violate the antitrust laws. These proposals provide exemptions for certain acquisitions of assets that are usually abundant and are used in markets that are unconcentrated. These two factors make it unlikely that a transfer of these types of assets will have anticompetitive effects. It is thus not necessary to examine each individual transaction to determine if it will violate the antitrust laws.

To accommodate parties who choose to structure their transactions as acquisitions of voting securities rather than as acquisitions of the underlying assets, proposed § 802.4 exempts acquisitions of voting securities of issuers whose assets consist solely of the assets exempted by proposed §§ 802.2 and 802.3.

Proposed § 802.5 exempts acquisitions by certain investors of rental real property, the acquisition of which is not already exempted by § 802.2. Proposed § 802.5 is based on the use to which those buyers put the acquired assets. It would exempt institutional investors (as defined in § 802.64) and persons whose sole business is the acquisition or management of investment rental property from the requirements of the act when they are acquiring investment rental property assets. The Commission believes that, so long as the assets remain as investment rental property assets, the acquisition of these assets is unlikely to violate the antitrust laws.

Proposed §§ 802.1, 802.2, 802.3, 802.4 and 802.5 are based on the Commission's authority in section 7A(d)(2)(A) of the act to ''define the terms used in (section 7A)'' (with the concurrence of the Assistant Attorney General) and sections 7A(d)(2) (B) and (C) to ''exempt * * * transactions which are not likely to violate the antitrust laws'' and to ''prescribe such other rules as may be necessary and appropriate to carry out the purposes of [section 7A].'' However, the Commission reserves the right to investigate certain transactions exempted from the reporting requirements by the proposed rules if these transactions are characterized by factors that increase the likelihood that the consummation of the transactions may violate the antitrust laws.

The Commission is aware that even with the significant coverage of the proposed rules, the exempt status of many transactions will remain unaddressed. These proposed rules do not interpret or apply to the entire statutory exemption created by section 7A(c)(1); there remain categories of transactions involving goods and realty that are not expressly treated under the proposed rules. For example, certain acquisitions of credit card receivables and certain acquisitions of assets subject to a lease financing arrangement may qualify for exemption as transfers in the ordinary course of business. Persons who desire advice on the exempt status of any transfer of goods, realty or other assets may contact the Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, or phone (202) 326–3100.

*I. Proposed Section 802.1: Acquisition of Goods in the Ordinary Course of Business*

Section 7A(c)(1) of the act exempts ''acquisitions of goods or realty transferred in the ordinary course of business.'' Proposed § 802.1 defines some acquisitions of assets that are in the ordinary course of business and other acquisitions that are not. This proposed section only covers transfers of goods. Transfers of realty are covered in proposed § 802.2.

Proposed § 802.1 defines four categories of acquisitions of goods: acquisitions of an operating unit, acquisitions of new goods, acquisitions of current supplies, and acquisitions of used durable goods. The proposed section states whether and under what circumstances each type of acquisition is exempt. These four categories of asset acquisitions are not comprehensive. As noted above, some asset acquisitions may not fit neatly into any of these defined categories.

Proposed § 802.1 has four paragraphs: Paragraph (a) denies the ordinary course of business exemption to any transfer of goods that is equivalent to the sale of a business. The next three paragraphs define acquisitions of goods that may be exempt. Paragraph (b) exempts the acquisition of new goods, and paragraph (c) exempts the acquisition of current supplies. Paragraph (d) defines certain transfers of used durable goods that are within the ordinary course of business. These include the following: acquisitions by or from bona fide dealers and resellers; transfers by an acquired person that has replaced the productive capacity of the assets being sold; and transfers by an acquired person that has outsourced an auxiliary function that was provided by the goods being sold.

In determining whether a given acquisition of goods is in the ordinary course of business and is therefore exempt under a provision of § 802.1, one should first determine if the goods constitute an operating unit. If the goods being sold make up an operating unit of the seller, the inquiry ends there, and the transaction is not exempt. If the goods do not constitute an operating unit, then they should be classified as either new goods, current supplies or used durable goods, and the appropriate provisions under § 802.1 should be applied.

The organization of § 802.1 is intended to make it easier to identify routine acquisitions that meet the criteria of section 7A(c)(1) for an exemption as an acquisition of goods transferred in the ordinary course of business. Sales of new goods and purchases of current supplies are frequent. The objective of the businesses covered by paragraphs (b) and (c) is to buy and sell such goods and supplies; thus such transactions meet the common meaning of transfers in the ordinary course of business. Exempting these transactions facilitates acquisitions of new goods that normally expand the supply of products or expand productive capacity and therefore do not tend to lessen competition. In contrast, acquisitions of entire businesses have greater potential to concentrate productive capacity and thereby may diminish competition.

A. *Operating Units.* Proposed § 802.1(a) excludes the acquisition of all or substantially all of the assets of an ''operating unit'' from the ordinary course of business exemption. An ''operating unit'' can be thought of as a collection of assets that has been operated as a business undertaking. The assets of an operating unit can include realty, current supplies and durable goods. Common examples of operating units include, but are not limited to,

regional divisions or company branches, international operations, a financial group, transportation operations, a factory or an oil processing facility. Factors important in determining whether a group of asset constitutes an operating unit include the extent to which the assets being sold are devoted to producing a certain product, or the extent to which such assets serve one or more specific geographic markets.

The proposal uses the term ''operating unit'' rather than the term ''operating division'' used in existing § 802.1(b). The latter term has created some uncertainty because some business entities use the term ''division'' in a manner that may not be consistent with this rule. For example, a business might use the term ''division'' to designate an unincorporated administrative segment of its enterprise, such as the ''East Coast Division'' or ''Tri-State Division.'' Such usage is designed to serve the needs of the business. The term ''operating unit'' has been proposed in order to make clear that the application of the rule is not dependent on the terminology used by a business.

The term ''operating unit'' is defined in the rule as ''assets that are operated by the acquired person as a business undertaking in a particular geographic area or for particular products and services, even though those assets may not be organized as a separate legal entity.'' Example 1 to § 802.1 illustrates a combination of assets that is considered to be an operating unit, the acquisition of which would be excluded from the ordinary course of business exemption. As further guidance in determining when a collection of assets constitutes an operating unit, the following factors are relevant: (1) Whether the seller is terminating a business function as a result of the sale, such as ceasing to sell in a geographic region or manufacture products for a particular business segment; (2) whether the industry perceives the assets as a separate unit; and (3) whether the sale of assets includes durable goods and the current supplies that are used in the operation of those durable goods.

The sale of an operating unit is one kind of transfer that the premerger notification program was intended to review and thus is not exempt under the ordinary course of business exemption. During review, the antitrust agencies consider whether, and to what extent, concentration of productive capacity may be increased by the sale of a business and whether competition will be adversely affected by the acquisition of a business.

B. *New Goods.* Proposed § 802.1(b) describes the type of acquisitions of goods that are most commonly referred to as acquisitions ''in the ordinary course of business.'' This paragraph exempts acquisitions of new goods that were produced by the seller for the purpose of sale or that were held by the seller solely for the purpose of resale.

Paragraph (b) of proposed § 802.1 focuses on the purpose for which the seller holds the new goods to determine if the transaction is in the ordinary course of business and is therefore exempt. The sales of new goods which the paragraph exempts are routine sales of inventory by manufacturers, wholesalers or retailers conducted in the ordinary course of business. As a general matter, there is no difficulty identifying the goods in the two circumstances in which this exemption applies. Goods that are ''produced'' mean goods not used by the seller to which he has added value through processing or manufacture and may include refurbished goods. ''New goods held at all times by the acquired person solely for resale'' means inventory held for sale that is not to be used by the seller or others prior to sale. When the seller uses goods that are held for sale, the exemption does not apply. The paragraph is specifically worded to deny this exemption to any sale of goods that were purchased for use, even if the goods are subsequently sold without being used.

The exemption set forth in paragraph (b) does not apply to any acquisition of new goods which are sold as part of a transaction that includes all or substantially all of the assets of an operating unit. This limitation on the exemption of new goods would apply even if all the assets transferred were new goods held solely for the purpose of resale. For example, if a marine supply wholesaler, which owned only an extensive inventory of hundreds of items from different manufacturers, sells its entire inventory to one person, the acquisition would not be exempt even though the sale is composed entirely of new goods. The sale of all of its inventory would be considered the sale of all or substantially all of its business since the primary assets of such a wholesaling business are inventory.

C. *Current Supplies.* Proposed § 802.1(c) described another category of asset acquisitions—the acquisition of ''current supplies''—that qualify for the ordinary course exemption. ''Current supplies'' is a new term to the rules and is described in subparagraphs (1), (2) and (3). Current supplies include goods bought for resale, raw materials, components, maintenance supplies and the like. Current supplies are purchased frequently and are either consumed in the daily conduct of business or incorporated into a final product. The proposal states that current supplies do not include used durable goods, which are discussed in proposed § 802.1(d).

The acquisition of current supplies is unlikely to create or extinguish a competitive entity and is therefore exempt unless acquired as part of an acquisition of an operating unit. Parties are permitted to claim the exemption even if the goods purchased are not new (so long as they are not used durable goods), so long as the acquired goods are to be held for resale, are to be consumed by the buyer, or are otherwise incorporated in the acquiring person's final product.

In applying paragraph (c), the focus is on the business of the acquiring person to determine if the exemption is available.

D. *Used Durable Goods.* Proposed § 802.1(d) provides that certain acquisitions of used durable goods qualify for the ordinary course of business exemption. The Commission recognizes that sales of used durable goods often meet a common sense definition of transfers of goods in the ordinary course of business and that not all used durable goods acquisitions have competitive significance. Sales of such used durable goods may be routine and considered by parties to be in the ordinary course of their businesses.

Sales of used durable goods may also facilitate the purchase of a new generation of equipment that will increase the productive capacity of a business. Therefore, paragraph (d) represents an attempt to identify certain categories of transfers of used durable goods that meet a common sense definition of ''ordinary course'' and appear unlikely to violate the antitrust laws: When goods are being acquired by or from persons holding the goods solely for resale; when the acquired person is replacing or upgrading the productive capacity provided by the goods being sold; and when the acquired person is outsourcing the auxiliary support functions performed by the goods being sold. Sales of used durable goods that diminish a company's productive capacity or sales of productive assets that result in a company's exit from a given product or geographic market are not included in the ordinary course of business exemption.

Proposed § 802.1(d) defines an acquisition of used durable goods as a transaction that is in the ordinary course of business if it meets specific criteria. The term ''used durable good'' is new to the rules currently in force. It is defined in proposed § 802.1(d) as a used good

which was ''designed to be used repeatedly and has a useful life greater than one year.''

An acquisition of used durable goods is exempt as within the ordinary course of business if two requirements are satisfied. The first requirement is that they must not be acquired as part of a transfer of an operating unit, defined in paragraph (a) as ''assets that are operated by the acquired person as a business undertaking in a particular geographic area or for particular products or services.'' This restriction prevents a company from using § 802.1(d) to transfer assets that result in the company's exit from a particular product line or regional market without first observing the reporting requirements.

The second requirement for exempting an acquisition of a used durable good is that any one of four criteria set forth in the proposed rule must be satisfied. The first criterion, that the acquiring person must hold the goods at all times solely for resale, and the second, that the acquired person must have held the goods at all times solely for resale, represent an exemption for dealers whose business is to purchase and sell used goods. The proposed exemption is unavailable if the person making the acquisition is in reality an intermediary for either the seller or another person who intends to use the goods (see Example 5 to § 802.1). This limitation attempts to forestall abuse of the dealer exemption by requiring notification in circumstances where there is any possibility that the dealer might be acting as a broker or an agent for an acquiring person or a third party. After considerable assessment of the necessity and applicability of this exemption, the Commission believes that the exemption should be included to allow dealers to make transfers within the ordinary course of their business without having to observe the reporting and waiting requirements. However, the Commission will closely monitor such transactions to ensure that the exemption is not being used as a ploy to circumvent the notification requirements of the act.

The third criterion recognizes that it is in the ordinary course of business for a company to replace or upgrade productive capacity and to sell the capacity it is replacing. Thus, an exemption is permitted for the sale of used durable goods if the productive capacity of these goods is replaced substantially or upgraded. Such replacements may result in an increase in the acquired person's productive capacity or manufacturing efficiencies. The proposed rule allows replacement of the used durable goods by acquisition or by lease. No minimum lease term is specified, however, in order for a transfer of the goods being replaced to be in the ordinary course of business, the replacement goods must be leased for a period that is substantially long enough to maintain or increase the company's current productive capacity. Such a period is industry specific and must be determined in good faith by the acquired person. Because this proposed provision requires that the productive capacity must be replaced substantially, the exemption is lost if the replacement goods result in more than a de minimis decease in the acquired person's capacity or an exit from a line of business or specific product or geographic market in which the acquired person currently operates.

The fourth criterion permits an exemption for sales of used durable goods if the acquired person is replacing an auxiliary support function that had been performed internally using the goods being sold by contracting with the purchaser or a third party to perform substantially similar functions. This provision essentially provides an exemption for the transfer of goods by persons that have elected to outsource certain of their auxiliary support functions. For example, a company may decide that it would be more cost effective to have a third party provide its data processing needs. To accomplish this objective, the company may enter into a contract with a third party for these services and sell all of the equipment it used internally to provide this function. Such transfers appear unlikely to pose any competitive concerns.

Auxiliary support functions include management, accounting, data processing, legal services, research and development, testing and warehousing. Although companies will sometimes outsource the manufacturing of some products they market, the sale of used durable goods that were used to produce those products does not qualify for exemption under this provision. Manufacturing, including the manufacturing of inputs for other products produced by the acquired person, is not an auxiliary function.

The exemption for the transfer of goods in connection with the outsourcing of auxiliary functions may include the sale of goods, such as machinery, that may constitute a discrete business unit. However, such a transfer does not constitute the acquisition of an operating unit unless the goods being sold are also used to derive revenues by providing services to entities not included within the acquired person. A company division that only provides auxiliary support services to the company's operating units is not itself an operating unit. A company unit that provides auxiliary services supports or benefits the company's operating units. For example, in a company containing a unit that only provides the company's internal data processing needs, that unit would be deemed to provide auxiliary support functions. However, if that unit derived revenues from providing data processing services to third parties, then the unit would be considered to be an operating unit. The distinction between an operating unit and a unit providing auxiliary support functions is, to some extent, industry specific.

The replacement and outsourcing exemptions both require that before the exemptions apply, the acquired person has already taken definitive steps to replace the goods being sold or obtain the auxiliary support functions that the goods being sold formerly provided. In addition, these steps must have been taken in good faith; this requirement prevents sham contracts that the acquired person cancels after transferring the productive capacity without observing the notification requirements and without replacing the capacity.

*II. Proposed Section 802.2: Certain Acquisitions of Real Property Assets*

Proposed § 802.2 identifies six categories of real property acquisitions that would be exempt from the reporting requirements of the act. It would exempt certain acquisitions of new facilities, unproductive real property, office and residential property, hotels and motels, agricultural property, and rental retail space and warehouses.

Some of these proposed provisions would create entirely new exemptions, and they result in part from an extensive review by the enforcement agencies of categories of real property acquisitions that appear ''not likely to violate the antitrust laws.'' Certain of the categories expand the exemption provided in current section 7A(c)(1) for acquisitions of realty in the ordinary course of business. For the most part, the types of real property assets that are included within this exemption are abundant, and their holdings are widely dispersed. Transfers of these categories of real property are generally small relative to the total amount of holdings, and entry into regional and local markets for these types of real property assets is usually easy.

The exemptions for new facilities, unproductive real property, office and residential property, hotels and motels,

agricultural property, rental retail space and warehouses state that any non-exempt assets that are being transferred as part of an acquisition of the exempt assets are separately subject to the requirements of the act and the rules. This approach to non-exempt portions of acquisitions is also used in § 802.3.

A. *New Facilities.* Proposed § 802.2(a) exempts the acquisition of new facilities, which may include real estate, equipment and assets incidental to the ownership of the new facility. The term ''new facility'' is new to the rules, and reflects the position of the PNO that transfers of ''turnkey'' facilities, i.e., new facilities capable of commencing operations immediately, are acquisitions of realty in the ordinary course of business and thus are exempt under 7A(c)(1). Although the provision is intended primarily to exempt turnkey facilities, it does not require that the facility be ready for immediate occupancy. The facility may need additional construction or outfitting at the time it is purchased and still qualify for the exemption.

The exemption applies only to new facilities that have not produced income. It also applies only if the acquired person has held the facility at all times solely for sale. The language of the exemption allows holders of the new facilities to be either builders of the facility (''constructed by the acquired person for sale'') or other persons, such as a creditor, who take possession of a new facility with the intention of selling it (''held at all times by the acquired person solely for resale''). These limitations prevent the sale by an acquired person of capacity constructed for the acquired person's use, as Example 1 to § 802.2 illustrates.

Proposed § 802.2(a) requires separate valuation of non-exempt assets being purchased in an acquisition of a new facility. If the value of the non-exempt assets exceed $15 million, and no other exemptions apply, then the purchase of these assets are subject to the notification requirements.

B. *Unproductive property.* Proposed § 802.2(b) exempts certain acquisitions of unproductive real property. The primary purpose of this exemption is to eliminate filing requirements for acquisitions of properties that have not generated a significant amount of income during a certain period of time. The exemption incorporates the concepts of undeveloped, non-income producing property, the acquisition of which is in the ordinary course of business, and abandoned property, which is no longer used to generate revenues.

Unproductive real property is real property that has not produced revenues of $5 million during the 36 months preceding the transaction and includes raw land, structures or other improvements and natural resources. Structures and improvements are additions to the real property that add value and include, for example, buildings, parking lots, recreational facilities (*e.g.*, golf courses), orchards and vineyards. Natural resources refers to any assets growing or appearing naturally on the land, such as timber and mineral deposits. Proposed § 802.2(b) excludes from the exemption acquisitions of manufacturing and non-manufacturing facilities that have not yet begun operations (turnkey facilities)—these are addressed in § 802.2(a)—as well as facilities that began operations within twelve months before the acquisition. Production machinery and equipment are not included in the definition of structures and improvements.

The revenue test will exempt most wilderness and rural land that is not used commercially and urban land that is vacant or contains structures that have generated a minimal amount of income during the most recent three-year period.

C. *Office and residential property.* Proposed § 802.2(c) exempts acquisitions of office and residential property. The definition of office or residential property has two components: (1) Real property, the acquisition of which is not exempt under any other provision of the act; and (2) real property used primarily for office or residential purposes. Although the proposed rule does not specify the meaning of ''primarily,'' it is contemplated that at least 75 percent of the space in the qualifying property, excluding common areas and parking facilities, is used for office or residential purposes. Under this definition, the total space being measured should consist of non-exempt property. Therefore, in determining whether a building is being used primarily for office or residential purposes, any portion of the building consisting of rental retail space, the acquisition of which is exempt under § 802.2(f), should be excluded from the determination. This proposal represents a broader exemption than the current PNO policy, which exempts office and residential property only if the value of the retail space being acquired in the same Standards Metropolitan Statistical Area does not exceed $15 million.

If the acquisition includes assets other than office or residential property, the acquisition of those assets is separately subject to the notification requirements. For example, if the acquiring person is also purchasing a factory for $20 million, the acquisition of the factory is separately subject to the reporting requirements. The proposed rule also specifies that if the purchaser is acquiring a business that is conducted on the office or residential property, the acquisition of the business, including the space in which the business is conducted, is subject to the notification requirements of the act. If the value of the business and the space in which the business is conducted exceeds $15 million, the acquisition is reportable.

The inclusion of ''assets incidental to the ownership of office and residential property'' is derived from the language of existing § 802.1. Although incidental assets may have value apart from the real property, they are often necessary for the continued and uninterrupted use of the property. Therefore, incidental assets are included in the description in proposed § 802.2(c) of office and residential property and are exempt assets.

D. *Hotels and motels.* Proposed § 802.2(d) exempts from the reporting requirements acquisitions of hotels and motels, except when these assets are to be acquired in connection with the acquisition of a ski resort or a casino or other gaming facility. The proposed exemption is based on the Commission's observation that acquisitions of hotels and motels, except for those excluded from the exemption, are unlikely to violate the antitrust laws. These types of assets are plentiful and widely held, and often they are owned by investor groups that hire management firms or national chains to operate the facilities. Even in local market entry appears to be relatively easy.

This exemption would include the acquisition by a national hotel chain of hotel assets of another hotel chain. However, if the acquisition includes assets other than hotels and motels, *e.g.*, the selling firm's trademark or its hotel management business, these assets must be separately valued to determine whether their acquisition is subject to the notification requirements.

E. *Agricultural property.* This section exempts acquisitions of agricultural property and associated assets integral to the agricultural business activities conducted on the property. Agricultural property that is intended to be covered by this exemption is real property that generally derives revenues under Major Groups 01 and 02 of the 1987 Standard Industrial Classification (SIC) Manual. Associated assets integral to the agricultural business activities

conducted on the property to be acquired include equipment, structures, (*e.g.*, barns used to house livestock and other animals), fertilizer, animal feed inventory (*e.g.*, livestock, poultry, crops, fruits, vegetables, milk, and eggs),

As described in the proposed rule, the exemption for the acquisition of agricultural property does not include processing facilities, even though revenues from processing facilities located on a farm may be reported under SIC codes starting with 01 or 02. If a dairy or poultry processing market is concentrated in a given local area, the transfer of in-house processing capacity may have a significant effect on the market. For this reason, the Commission believes that such transfers should be reviewed prior to consummation so the enforcement agencies can determine whether the proposed acquisition will affect competition adversely.

This exemption reflects the Commission's continuing efforts to develop exemptions for categories or acquisitions that are not likely to violate the antitrust laws. In the case of agricultural property exempted by § 802.2, there is an abundance of real property assets with widely dispersed ownership. Such acquisitions are unlikely to have adverse effects on competition.

F. *Rental retail space; warehouse.* Proposed § 802.2(f) exempts acquisitions of two other categories of real property, rental retail space and warehouses. Rental retail space includes structures that house retail establishments, such as shopping centers, strip smalls, and stand alone buildings. These types of assets are abundant and widely held by insurance companies, banks, other institutional investors and individual investors as investments and rental property. The Commission believes that acquisitions of these types of real property assets are unlikely to violate the antitrust laws.

However, the proposed rule provides that if the acquiring person is also acquiring a business that is conducted on the real property, the acquisition of that business, including the portion of the real property on which the business is conducted, is separately subject to the notification requirement of the act. For example, if any purchaser (including a department store chain) proposed to acquire from any seller (including another department store chain) several shopping centers and the stores of the seller located in the shopping centers, the acquisition of the stores including the portion of the shopping centers in which the stores were located, would be separately subject to the notification requirements. However, the acquisition of the portion of the shopping centers that housed other retail establishments would be exempt under this proposed rule. Example 8 illustrates that the exemption for the acquisition of warehouses is lost if warehouses are being acquired in connection with the acquisition of a wholesale distribution business.

The proposed rule also provides that if an acquisition of rental retail space or a warehouse includes other assets, those other assets are separately subject to the reporting requirements of the act.

*III. Proposed Section 802.3: Acquisition of Carbon-Based Mineral Reserves*

Proposed § 802.3 adds an exemption for certain acquisitions of carbon-based mineral reserves, whether such reserves are currently in production or have ever been in production. The Commission proposes to exempt acquisitions of carbon-based mineral reserves valued at $200 million or less.

This proposal is designed to exempt acquisitions of producing reserves. If the reserves being acquired are not yet producing, or are producing at a level below the income threshold in § 802.2(b), the acquisition may be exempted by § 802.2(b) as an acquisition of unproductive real property. If the reserves qualify as unproductive property, their acquisition is exempt, regardless of the value of the reserves. Producing reserves are governed by the valuation requirement of § 802.3 and are not exempt if their value exceeds $200 million.

The Commission's studies of the coal and oil and gas industries have shown that the value of the reserves in these industries are substantial compared with asset holdings in other industries. The holdings of reserves in these industries are widely dispersed, and individual acquisitions have had minimal effect on concentration. However, the Commission believes that an unlimited exemption for reserves in these industries is inappropriate, because the scale of the largest acquisitions of reserves warrants an examination of the potential effects on competition.

The $200 million threshold in proposed § 802.3 applies to reserves, rights to the reserves and associated exploration or production assets. The acquisition of these associated assets is not separately reportable because these assets generally have no competitive significance separate from the reserves. In many instances, producing reserves contain dedicated equipment that may have a market value exceeding $15 million but have no practical value absent the reserves. In addition, the wide availability of used equipment in the oil and gas and coal industries makes it unlikely that a servicer of oil fields or coal mines could purchase reserves to restrict supply of available equipment in a given region. Thus, the Commission believes that the inclusion of associated exploration and production assets is necessary to facilitate meaningful application of the exemption.

Associated exploration or production assets are defined in the current proposal to include equipment, machinery, fixtures and other assets that are integral to the exploration or production activities of the reserves. In the oil and gas industry, examples of associated exploration or production assets include proprietary or licensed geological and geophysical data, wells, pumps, compressors, easements, permits and rights of way. Excluded from these assets are flow and gathering pipelines, distribution pipelines, interests in pipelines, processing facilities and refineries. Acquisitions of these assets in certain local markets have, from time to time, raised competitive concerns prompting investigations by the enforcement agencies, and the Commission does not believe that such acquisitions as a class are not likely to violate the antitrust laws.

In the coal industry, associated production assets are facilities and equipment that are dedicated exclusively to production of the reserves being transferred. For example, in surface mining in the western U.S., such assets may consist of various load out facilities, including storage barns and railroad spurs, and heavy equipment such as draglines. Associated production assets would also include the long-term coal contracts and federal leases related to the reserves.

It has been suggested that any exemption for carbon-based mineral reserves be expanded to included all mineral reserves and renewable natural resources. The perceived need for such an exemption regarding non-producing reserves may be lessened by the inclusion in these proposals of § 802.2(b), which would exempt acquisitions of other such reserves that are either not yet producing or have generated revenues below the threshold amount. Regarding producing reserves, the Commission has not included these in § 802.3 because it does not have an adequate factual basis for determining that these categories of transactions should be exempt from the requirements of the act or subject to a threshold higher than the $15 million threshold that is identified in § 802.20.

*IV. Proposed Section 802.4: Acquisitions of Voting Securities of Issuers Holding Only Real Property and Carbon-Based Mineral Reserves*

Proposed § 802.4 is designed to exempt the acquisition of voting securities of certain real estate companies that hold real property assets the direct acquisition of which are exempt from the reporting requirements pursuant to proposed §§ 802.2 and 802.3. This provision derives in part from existing § 802.1(a) which exempts ''an acquisition of the voting securities of an entity whose assets consist solely of real property'' and related assets, if a direct acquisition of those real property and related assets would be exempt.

As the Commission stated when it promulgated existing § 802.1: (T)he applicability of (existing 802.1(a)) should not depend upon the form of the acquisition. At least from an antitrust standpoint, whether real estate is acquired directly or by acquiring voting securities would seem to make no difference * * *. 43 FR 33488, July 31, 1978.

Proposed § 802.4(a) retains this approach with regard to new facilities, unproductive real property, office and residential property, hotels and motels, agricultural property, rental retail space and warehouses. Proposed § 802.4(b) contains a comparable exemption for carbon-based mineral reserves.

*V. Proposed Section 802.5: Acquisitions of Investment Rental Property Assets by Certain Investors*

Proposed § 802.5 would exempt acquisitions of investment rental property by institutional investors (as defined by § 802.64 of the rules) and by persons whose sole business is the acquisition or management of investment rental property. This exemption is based in part on section 7A(c)(11) of the act which exempts ''acquisitions, solely for the purpose of investment, by a bank, bank association, trust company, investment company, or insurance company, of * * * (B) assets in the ordinary course of its business.'' It is designed to exempt most types of real property acquisitions typically made by institutional investors or real estate development and management companies that are not exempted by proposed § 802.2. The proposed rule supplements proposed § 802.2 by recognizing that there may be additional categories of assets that, when transferred to certain parties, are not likely to violate the antitrust laws.

Institutional investors, such as financial institutions, insurance companies, pensions plans and REITs, typically acquire for investment real property such as hotels and shopping centers. Acquisitions of these types of assets are exempt under § 802.2(d) and § 802.2(f)(1), respectively. Proposed § 802.5 is intended to exempt acquisitions of other types of real estate, such as industrial parks, that institutional investors and real estate development and management companies often purchase.

This exemption is applicable only to institutional investors or persons engaged solely in the business of acquiring or managing investment rental property. It applies only to acquisitions of real property that will be held by the purchaser solely for rental or investment purposes. Thus, the intent of the purchaser at the time of the acquisition must be considered to determine whether the exemption is available.

Acquisitions of real property by institutional investors and real estate development and management companies are typically made solely for investment. These investors play no active role in the business conducted on these properties and seek only to profit from their investment in the real estate. In order to reduce risk of loss in the value of the real estate they hold, purchasers of numerous properties generally do not concentrate their investments in a single geographic market. In many cases, these properties are purchased from persons who already maintain them as investment rental property. Given the size and unconcentrated nature of the real estate market, such acquisitions are not likely to violate the antitrust laws.

The requirement that real property, in order to come within the definition of ''investment rental property assets,'' be held solely for rental or investment purposes is designed to exclude from the exemption acquisitions of rental property that may reduce competition. In one such scenario, the acquiring person purchases property that is leased to a competitor of an entity within the same person as the institutional investor, and then chooses not to renew the competitor's lease in order to disadvantage the competitor. Since the purchaser intends to use its ownership of the property to disadvantage a competitor, the property will not be held solely for rental or investment purposes, and the § 802.5 exemption is not available. The requirement that property will be rented only to entities not included within the acquired person is also designed to assure that the exemption will not be available for any acquisition that is designed to achieve business objectives that are not related to the real estate market.

For some acquisitions, in order to determine prior to the acquisition whether the buyer's use requirement will be fulfilled post-acquisition, it may be necessary to examine the acquisition intent of the acquiring person, particularly if that investor is controlled by a person that also controls entities engaged in other businesses. The acquisition intent can be inferred from the context of the transaction and from actions by the acquiring person before the acquisition. Circumstances or conduct such as the following may be scrutinized separately or in combination to determine whether the acquiring person has an intent that is fully consistent with holding property solely as investment rental property assets: (1) The acquiring person undertook, prior to the acquisition, a study of the cost of converting the property for use by one of its businesses; (2) the property is to be converted for use by the acquiring person; (3) the property will be transferred to an entity within the acquiring person which would not qualify for an exemption under § 802.5; (4) prior to the acquisition, the property is being leased to or used by entities included within the acquiring person; (5) a portion of the acquired property is being leased at the time of the acquisition to a competitor of the acquiring person; and (6) the purchase price reflects the value of a business operated on the property rather than the investment rental value of the property.

The investment rental property exemption may apply to real property, such as office or residential property, hotels and motels, that is also exempt under proposed § 802.2. However, the important distinction between § 802.2 and § 802.5 is that § 802.2 exempts acquisitions of specific classes of assets by any acquiring person and does not incorporate the intent-based test of § 802.5. Proposed § 802.5 exempts any type of asset that can be classified as investment rental property, but it is available only to institutional investors and real estate development and management companies. In addition, the exemptions for acquisition of real property under § 802.2 apply even if the acquiring person occupies the property for any purpose; proposed § 802.5 permits the acquiring person to use the acquired investment rental property assets only to manage or operate real property.

*VI. Aggregation Rules*

Section 801.15 states that the aggregation rules of § 801.13 do not apply to specified classes of transactions. At present, transactions exempted by section 7A(c)(1) of the act fall within one of the classes listed. As a result of § 801.15(a), in determining

whether the more than $15 million size-of-transaction criterion of section 7A(a)(3) is met, the value of assets acquired in the ordinary course of business is never counted. Because proposed § 802.1 merely declares that certain acquisitions are and are not considered in the ordinary course of business under section 7A(c)(1), it does not appear necessary to list proposed § 802.1 separately in § 801.15(a). However, to eliminate possible confusion, proposed § 802.1 is listed in proposed § 801.15(a), along with 7A(c)(1), to make clear that assets exempted pursuant to § 802.1(a), (b) and (c)(1) are not deemed to be held as the result of an acquisition for aggregation purposes. Therefore, a acquisition of current supplies valued at $8 million is not aggregated with later acquisitions from the same person to determine if a proposed acquisition would exceed the $15 million size-of-transaction notification threshold, since the current supplies are exempt pursuant to section 7A(c)(1) and § 802.1(b).

The other proposed exemptions based on section 7A(c)(1) and other sections of the act, *e.g.,* section 7A(d)(2)(B), are listed separately in § 801.15 to make clear whether and under what circumstances the assets they describe must be aggregated pursuant to § 801.13. Proposed § 802.2, which would exempt acquisitions of new facilities, unproductive real property, office and residential property, hotels and motels, agricultural property, rental retail space and warehouses, is also listed in § 801.15(a), because § 802.2 sets no dollar limit on the amount of exempt assets that may be acquired without prior notification. Proposed § 802.4(a), which exempts acquisitions of voting securities of issuers holding assets whose purchase would be exempt under § 802.2, and proposed § 802.5, which exempts acquisitions of investment rental property by certain investors, also appear in proposed § 801.15(a).

Proposed § 802.3, which exempts acquisitions of carbon-based mineral reserves, and proposed § 802.4(b), which exempts acquisitions of voting securities of issuers holding exempt assets under § 802.3, appear in § 801.15(b). This provision requires parties to aggregate the value of otherwise exempt assets that are transferred in separate acquisitions. Section 801.15(b) provides that the aggregation rules of § 801.13 are to be applied if, as a result of a proposed subsequent transaction, the assets from that transaction and an earlier transaction will exceed a quantitative limitation on the exemption of assets of that kind. Thus the $200 million carbon-based mineral reserves limitation in § 802.3 which was not reached in an earlier acquisition may be exceeded by a subsequent acquisition of reserves.

Example 4 of § 801.15 amends the current Example 4, in which the acquiring person is purchasing two mines. The existing example does not indicate whether the mines contain carbon-based minerals. Based on the value of the mines stated in the example, proposed § 802.3 would exempt their acquisition, if they are carbon-based mineral reserves. To avoid possible confusion, the acquired assets have been changed to manufacturing plants.

### List of Subjects in 16 CFR Parts 801 and 802

Antitrust.

### Proposals

The Commission proposes to amend title 16, chapter I, subpart H, the Code of Federal Regulations as follows:

## PART 801—COVERAGE RULES

1. The authority citation for part 801 continues to read as follows:

**Authority:** Sec. 7A(d), Clayton Act, 15 U.S.C. 18a(d), as added by sec. 201, Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94–435, 90 Stat. 1390.

2. Section 801.15(a) (2) and (b) are revised to read as follows:

#### § 801.15 Aggregation of voting securities and assets the acquisition of which was exempt.

* * * * *

(a) * * *

(2) Sections 802.1, 802.2, 802.4(a), 802.5, 802.6(b)(1), 802.8, 802.31, 802.35, 802.50(a)(1), 802.51(a), 802.52, 802.53, 802.63, and 802.70;

(b) Assets or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under section 7A(c)(9) and §§ 802.3, 802.4(b), 802.50(a)(2), 802.50(b), 802.51(b) and 802.64 unless the limitations contained in section 7A(c)(9) or those sections do not apply or as a result of the acquisition would be exceeded, in which case the assets or voting securities so acquired will be held; and

* * * * *

3. Section 801.15, Example 4 is revised, and Example 5 is added to read as follows:

#### § 801.15 Aggregation of voting securities and assets the acquisition of which was exempt.

* * * * *

*Examples:* * * *

4. Assume that acquiring person ''B,'' a United States person, acquired from corporation X two manufacturing plants located abroad, and assume that the acquisition price was $40 million. In the most recent year, sales in the United States attributable to the plants were $15 million, and thus the acquisition was exempt under § 802.50(a)(2). Within 180 days of that acquisition, ''B'' seeks to acquire a third plant from X, to which United States sales of $12 million were attributable in the most recent year. Since under § 801.13(b)(2), as a result of the acquisition, ''B'' would hold all three plants of X, and the $25 million limitation in § 802.50(a)(2) would be exceeded, under paragraph (b) of this rule, ''B'' would hold the previously acquired assets for purposes of the second acquisition. Therefore, as a result of the second acquisition of all three plants before acquiring the third plant.

5. ''A'' acquires $100 million in coal rights from ''B.'' Two months later, ''A'' agrees to acquire oil and gas rights valued at $75 million from ''B.'' Paragraph (b) of this section and § 801.13 require aggregating the previously exempt acquisition of coal rights with the second acquisition. If the two acquisitions, when aggregated, exceed the $200 million limitation on the exemption for carbon-based mineral reserves in § 802.3, ''A'' and ''B'' would be required to file notification for the latter acquisition, including within the filings the earlier acquisition. Since, in this example, the total value of the assets in the two acquisitions, when aggregated, is less than $200 million, both acquisitions are exempt from the notification requirements.

## PART 802—EXEMPTION RULES

1. The authority citation for part 802 continues to read as follows:

**Authority:** Sec. 7A(d), Clayton Act, 15 U.S.C. 18a(d), as added by sec. 201, Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94–435, 90 Stat. 1390.

2. Section 802.1 is revised to read as follows:

#### § 802.1 Acquisitions of goods in the ordinary course of business.

Acquisitions of goods in the ordinary course of business are, pursuant to section 7A(c)(1), exempt from the notification requirements of the act. This section identifies certain acquisitions of goods that are exempt as transfers in the ordinary course of business. This section also identifies certain acquisitions of goods that are not in the ordinary course of business and, therefore, do not qualify for the exemption.

(a) *Operating unit.* An acquisition of all or substantially all the assets of an operating unit is not an acquisition in the ordinary course of business. An operating unit means assets that are operated by the acquired person as a business undertaking in a particular

geographic area or for particular products or services, even though those assets may not be organized as a separate legal entity.

(b) *New goods.* An acquisition of new goods produced by the acquired person for sale, or of new goods held by the acquired person solely for resale, is in the ordinary course of business, except when acquired as part of an acquisition described in paragraph (a) of this section.

(c) *Current supplies.* An acquisition of current supplies is in the ordinary course of business except when acquired as part of an acquisition described in paragraph (a) of this section. The term ''current supplies'' includes the following kinds of assets:

(1) Goods acquired for the purpose of resale (*e.g.*, inventory),

(2) Goods acquired for consumption in the acquiring person's business (*e.g.*, office supplies, maintenance supplies or electricity), and

(3) Goods acquired to be incorporated in the final product (*e.g.*, raw materials and components).

The term ''current supplies'' does not include used durable goods (see paragraph (d) of this section.

(d) *Used durable goods.* A good is ''durable'' if it is designed to be used repeatedly and has a useful life greater than one year. An acquisition of used durable goods is an acquisition in the ordinary course of business if the goods are not acquired as part of an acquisition described in paragraph (a) of this section *and* any of the following criteria are met:

(1) The goods are acquired and held by the acquiring person solely for resale; or

(2) The goods are acquired from an acquired person who acquired and has held the goods solely for resale; or

(3) The productive capacity of the goods being sold has been replaced substantially by the acquired person, by acquisition or lease, or the acquired person has in good faith executed a contract, agreement in principle or letter of intent to replace substantially, by acquisition or lease, the productive capacity of the goods being sold; or

(4) The goods have been used by the acquired person to provide auxiliary functions, such as management services, accounting, data processing, and legal services, that support its primary business functions, and the acquired person has in good faith executed a contract, agreement in principle or letter of intent to obtain substantially similar auxiliary functions as were provided by the goods being sold.

*Examples:* 1. Stereo Corporation, which manufacturers cassette and compact disc players, decides to sell all of the assets of its Customer Service Division to ''X'' for $16 million. This division repairs the company's products and products manufactured by others. The division's assets include a repair facility valued at $10 million and an inventory of replacement parts valued at $6 million. The combined assets constitute an operating unit of Stereo Corporation. Thus, no part of the acquisition is exempt as an acquisition in the ordinary course of business.

2. ''A,'' a manufacturer of airplane engines, agrees to pay $20 million to ''B,'' a manufacturer of airplane parts, for certain engine components to be used in the manufacture of the airplane engines. The acquisition is exempt under § 802.1(b) as new goods as well as under § 802.1(c)(3) as current supplies.

3. ''A,'' a power generation company, proposes to purchase from ''B,'' a coal company, $25 million of coal under a long-term contract for use in its facilities to supply electric power to a regional public utility and steam to several industrial sites. This transaction is exempt under § 802.1(c)(2) as an acquisition of current supplies. However, if ''A'' proposed to purchase coal reserves rather than enter into a contract to acquire output of a coal mine, the acquisition would not be exempt as an acquisition of goods in the ordinary course of business. The acquisition may still be exempt pursuant to § 802.3 as an acquisition of reserves of carbon-based minerals if the requirements of that section are met.

4. ''A,'' a national producer of canned fruit, preserves, jams and jellies, agrees to purchase from ''B'' for $25 million a total of 10,000 acres of orchards and vineyards in several locations throughout the U.S. ''A'' plans to harvest the fruit from the acreage for use in its canning operations. The acquisition is not exempt under § 802.1 because orchards and vineyards are real property, not ''goods.'' If, on the other hand, ''A'' had contracted to acquire from ''B'' the fruit and grapes harvested from the orchards and vineyards, the acquisition would qualify for the exemption as an acquisition of current supplies under § 802.1(c)(3). Although the transfer of orchards and vineyards is not exempt under § 802.1, the acquisition would be exempt under § 802.2 as an acquisition of agricultural property.

5. ''A,'' a major passenger airline, proposes to sell two of its used aircraft for $15.5 million to ''B,'' a used airplane dealer who purchases planes from the major U.S. airline companies. ''B's'' acquisition of the used airplanes is exempt under § 802.1(d)(1) provided that ''B'' is not acting as a broker or as the agent for the seller or the ultimate purchaser of the used airplanes.

6. ''A,'' a passenger airline, plans to sell for $18 million two of its used airplanes to ''B,'' a cargo airline. ''A'' will also sell three of its used airplanes for $25 million to ''C,'' a regional passenger air carrier. ''A'' has, in good faith, executed a contract to acquire planes with essentially the same capacity from an airplane manufacturer to replace the planes it is selling to ''B'' and ''C.'' Since ''B'' and ''C'' are acquiring goods that the seller, ''A,'' has contracted to replace, both acquisitions are exempt under § 802.1(d)(3).

7. ''A,'' a manufacturing company, has acquired several new machines that will replace equipment on one of its production lines. ''A's'' capacity to produce the same products will increase modestly when the integration of the new equipment is completed. ''B,'' a manufacturing company that produces products similar to those produced by ''A,'' has entered into a contract to acquire for $18 million the machinery that ''A'' is replacing. Since ''A'' is replacing with new machinery the productive capacity of the used equipment it is selling, the acquisition by ''B'' is exempt under § 802.1(d)(3).

8. ''A'' will sell to ''B'' for $16 million all of the equipment ''A'' uses to perform ''A's'' data processing requirements. ''A'' and ''B'' also entered into a contract which requires ''B'' to perform ''A's'' data processing requirements. Although the assets ''B'' will acquire make up essentially all of the assets of one of ''A's'' auxiliary support services divisions, the acquisition qualifies for the exemption in § 802.1(d)(4) because auxiliary support functions, however organized, are not an operating unit as defined by § 802.1(a). Auxiliary functions are not a ''business undertaking'' as that term is used in § 802.1(a). Rather, auxiliary functions provide support and benefit to the company's operating units and support the company's primary business activities. However, if the assets being sold also derived revenues from providing data processing services to third parties, then the transfer of these assets would not be exempt under § 802.1(d)(4), since the equipment is being used in connection with a business undertaking of ''A,'' in addition to providing auxiliary functions to ''A''.

In this example, the acquisition by ''B'' is exempt under § 802.1(d)(4) because ''A'' has entered into a contract for the provision of the auxiliary functions provided by the goods being sold. The exemption would apply even if ''A'' were contracting for the provision of these services with a party other than ''B.''

9. ''A,'' an automobile manufacturer, is discontinuing its manufacture of metal seat frames for its cars. ''A'' enters into a contract with ''B,'' a manufacturer of various fabricated metal products, to sell its seat frame production lines and to purchase from ''B'' all of its metal seat frame needs for the next five years. This transfer of productive capacity by ''A'' is not exempt pursuant to § 802.1(d)(4). ''A's'' sale of production lines is not the transfer of goods that provide auxiliary functions to support the primary business activities of ''A''; this manufacturing equipment is an integral part of ''A's'' production operations and thus comprises an operating unit.

3. Part 802 is amended by adding §§ 802.2, 802.3, 802.4 and 802.5 to read as follows:

### § 802.2 Certain acquisitions of real property assets.

(a) *New facilities.* An acquisition of a new facility is exempt as a transfer of realty in the ordinary course of business. A new facility is a structure that has not produced income *and* was

either constructed by the acquired person for sale or held at all times by the acquired person solely for resale. The new facility may include realty, equipment or other assets associated with the operation of the new facility. In an acquisition that includes a new facility, the transfer of any other assets shall be subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(b) *Unproductive real property.* An acquisition of unproductive real property shall be exempt from the requirements of the act. In an acquisition that includes unproductive real property, the transfer of any assets that are not unproductive real property shall be subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(1) Unproductive real property is any real property, including raw land, structures or other improvements and natural resources, that has not generated total revenues in excess of $5 million during the thirty-six (36) months preceding the acquisition.

(2) Unproductive real property does not include manufacturing and non-manufacturing facilities that have not yet begun operation or manufacturing or non-manufacturing facilities that began operation within the twelve (12) months preceding the acquisition.

(c) *Office and residential property.* (1) An acquisition of office or residential property shall be exempt from the requirements of the act. In an acquisition that includes office or residential property, the transfer of any assets that are not office or residential property shall be subject to the requirements of the act and these rules as if such assets were being transferred in a separate acquisition.

(2) Office and residential property is real property, the acquisition of which is not exempt under another provision of the act, that is used primarily for office and residential purposes and includes:

(i) Office buildings,

(ii) Residences,

(iii) Common areas on the property, including parking and recreational facilities, and

(iv) Assets incidental to the ownership of such property, including cash, prepaid taxes or insurance, rental receivables and the like.

(3) If the acquisition includes the purchase of a business conducted on the office and residential property, the transfer of that business, including the space in which the business is conducted, shall be subject to the requirements of the act and these rules as if such business were being transferred in a separate acquisition.

(d) *Hotels and motels.* (1) An acquisition of a hotel or motel shall be exempt from the requirements of the act. In an acquisition that includes a hotel or motel, the transfer of any assets that are not a hotel or motel shall be subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(2) An acquisition of a hotel or motel that includes a casino, or a hotel or motel that is being acquired as part of the acquisition of a ski resort, shall be subject to the requirements of the act and these rules.

(e) *Agricultural property.* An acquisition of agricultural property and associated agricultural assets shall be exempt from the requirements of the act. Agricultural property is real property and assets that primarily generate revenues from the production of crops, fruits, vegetables, livestock, poultry, milk and eggs.

(1) Associated agricultural assets are assets integral to the agricultural business activities conducted on the property. Associate agricultural assets include, but are not limited to, inventory (*e.g.*, livestock, poultry, crops, fruit, vegetables, milk, eggs); equipment dedicated to the income-generating activities conducted on the real property; structures that house livestock and other animals raised on the real property; and fertilizer and animal feed. Associated agricultural assets do not include processing facilities, such as poultry slaughtering and processing facilities.

(2) If an acquisition of agricultural property includes processing facilities and other assets that are not associated agricultural assets, these facilities and assets are subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(f) *Retail rental space; warehouses.* An acquisition of retail rental space (including shopping centers) or warehouses shall be exempt from the requirements of the act, except when the retail rental space or warehouse is to be acquired in an acquisition of a business conducted on the real property. In an acquisition of retail rental space or warehouses, the transfer of any assets that are neither retail rental space nor warehouses shall be subject to the requirements of the act and these rules as if such assets were being transferred in a separate acquisition.

*Examples:* 1. ''A,'' a major automobile manufacturer, builds a new automobile plant in anticipation of increased demand for its cars. The market does not improve and ''A'' never occupies the facility. ''A'' then sells the facility to ''B,'' another automobile manufacturer. This acquisition is not exempt as an acquisition of an new facility, even though the facility has not produced any income, since ''A'' did not construct the facility for sale. Also, the acquisition is not exempt as an acquisition of unproductive property since manufacturing facilities that have not yet begun operations are explicitly excluded from that exemption.

2. ''A'' proposes to acquire a $100 million tract of wilderness land from ''B.'' Copper deposits valued at $17 million and timber reserves valued at $20 million are situated on the land and will be conveyed as part of this transaction. During the last three fiscal years preceding the sale, the property generated $50,000 from the sale of a small amount of timber cut from the reserves. ''A's'' acquisition of the wilderness land from ''B'' is exempt as an acquisition of unproductive real property because the property did not generate annual revenues exceeding $5 million during the thirty-six months preceding the acquisition. The copper deposits and timber reserves are by definition unproductive real property and, thus, are not separately subject to the notification requirements.

3. ''A'' proposes to purchase from ''B'' for $40 million an old steel mill that is not currently operating to add to ''A's'' existing steel production capacity. The mill has not generated revenues during the 36 months preceding the acquisition but contains equipment valued at $16 million that ''A'' plans to refurbish for use in its operations. ''A's'' acquisition of the mill and the land on which it is located is exempt as unproductive real property. However, the transfer of the equipment and any other assets other than the unproductive property is not exempt and is separately subject to the notification requirements of the act.

4. ''A'' proposes to purchase two downtown lots, Parcels 1 and 2, from ''B'' for $40 million. Parcel 1 contains no structures or improvements. A hotel is located on Parcel 2 and has generated $9 million in revenues during the past 3 years. The purchase of Parcel 1 is exempt if it qualifies as unproductive real property; *i.e.*, it has not generated annual revenues in excess of $5 million in the three fiscal years prior to the acquisition. Parcel 2 is not unproductive real property, but its acquisition is exempt under § 802.2(d) as the acquisition of a hotel.

5. ''A'' intends to purchase a poultry farm from ''B.'' The acquisition of the poultry farm is a transfer of agricultural property that is exempt pursuant to § 802.2(e). If, however, ''B'' has a poultry slaughtering and processing facility on his farm, ''A'' would be required to file notification for the acquisition of the processing facility if the higher of the acquisition price or the fair market value of the facility exceeds $15 million.

6. ''A'' proposes to purchase the prescription drug wholesale distribution business of ''B'' for $50 million. The business includes six regional warehouses used for ''B's'' national wholesale drug distribution business. Since ''A'' is acquiring the warehouses in connection with the acquisition of ''B's'' prescription drug

wholesale distribution business, the acquisition of the warehouses in not exempt.

**§ 802.3 Acquisitions of carbon-based mineral reserves.**

(a) An acquisition of carbon-based mineral reserves (oil, natural gas, coal, shale or tar sands) or rights to carbon-based mineral reserves, whether such reserves are presently in production or have ever been in production, and associated exploration or production assets shall be exempt from the requirements of the act if the value of the carbon-based mineral reserves, the rights and the associated exploration or production assets to be held as a result of the acquisition does not exceed $200 million. In an acquisition that includes carbon-based mineral reserves, rights to carbon-based mineral reserves and associated exploration or production assets, the transfer of any other assets shall be subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(b) Associated exploration or production assets means equipment, machinery, fixtures and other assets that are integral to current or future exploration or production activities associated with the carbon-based mineral reserves that are being acquired. Associated exploration or production assets do not include any pipeline system or processing facility.

*Example:* 1. ''A'' proposes to purchase from ''B'' for $250 million gas reserves that are not yet in production and have not generated any income. ''A'' will also acquire from ''B'' for $180 million producing oil reserves and associated assets such as wells, compressors, pumps and other equipment. The acquisition of the gas reserves is exempt as a transfer of unproductive property under § 802.2(b). The acquisition of the oil reserves and associated assets is exempt pursuant to § 802.3, since the acquisition price does not exceed the $200 million limitation.

2. ''A,'' an oil company, proposes to acquire oil reserves currently in production, several associated processing facilities and a gathering pipeline system for $180 million. The acquisition of the reserves is exempt. However, ''A'' must determine the value of the processing facilities and the gathering pipeline system, since these assets are excluded from the exemption in § 802.3 for transfers of associated exploration or production assets. If their value exceeds $15 million, and their acquisition is not otherwise exempt, ''A'' must file with respect to the transfer of the facilities and the pipeline system.

3. ''A,'' an oil company, proposes to acquire a coal mine and associated production assets for $90 million from ''B,'' an oil company. ''A'' will also purchase from ''B'' oil reserves valued at $100 million and an oil refinery valued at $13 million. The acquisition of the coal mine and the oil reserves is exempt pursuant to § 802.3. Although the refinery is excluded from the exemption in § 802.3 for transfers of associated exploration and production assets, ''A's'' acquisition of the refinery is not subject to the notification requirements of the act because its value does not exceed $15 million.

**§ 802.4 Acquisitions of voting securities of issuers holding certain real property assets.**

(a) An acquisition of voting securities of an issuer whose assets consist solely of assets whose purchase would be exempt from the requirements of the act pursuant to § 802.2 is exempt from the reporting requirements.

(b) An acquisition of voting securities of an issuer whose assets consist or will consist solely of assets whose purchase would be exempt from the requirements of the act pursuant to § 802.3 is exempt from the reporting requirements.

*Example* 1. ''A,'' a real estate investment company, proposes to purchase 100 percent of the voting securities of Company C, a wholly-owned subsidiary of ''B,'' a construction company. C's assets are a newly constructed, never occupied hotel, including fixtures, furnishings and insurance policies. The hotel qualifies as a new facility under § 802.2(a), and is also exempt under § 802.2(d). Therefore, the acquisition of the voting securities of C is exempt pursuant to § 802.4(a).

**§ 802.5 Acquisitions of investment rental property assets by certain investors.**

(a) Acquisitions of investment rental property assets, or of voting securities of an entity the assets of which consist solely of investment rental property assets, by an institutional investor (as defined by § 802.64) or by any person whose sole business is the acquisition or management of investment rental property assets, shall be exempt from the requirements of the act.

(b) Investment rental property assets. Investment rental property assets means real property that:

(1) Will be rented only to entities not included within the acquiring person; and

(2) Will be held solely for rental or investment purposes. Investment rental property assets include:

(i) Property currently rented,

(ii) Property held for rent but not currently rented,

(iii) Common areas on the property,

(iv) Assets incidental to the ownership of property, which may include cash, prepaid taxes or insurance, rental receivables and the like, and

(v) Space occupied by the acquiring person for the sole purpose of maintaining, managing, or supervising the operation of real property.

*Example:* 1. Insurance Company ''A'' proposes to acquire a hospital currently leased to and operated by ''B,'' a major for-profit hospital corporation. ''A'' intends to continue ''B's'' lease with the exception of one floor of the hospital, which ''A'' will lease to an independent radiology clinic which the hospital will use for its outpatient radiology needs. This acquisition is an exempt acquisition of investment rental property assets since ''A'' intends to rent the facility to the hospital and an independent clinic and, thus, is holding the hospital solely for rental and investment purposes.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

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Federal Register

Friday
July 28, 1995

## Part VI

# The President

**Proclamation 6812—National Korean War Veterans Armistice Day, 1995**

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# Presidential Documents

**Title 3—**

**The President**

**Proclamation 6812 of July 26, 1995**

## National Korean War Veterans Armistice Day, 1995

**By the President of the United States of America**

**A Proclamation**

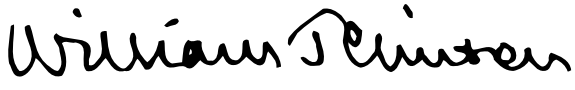
On July 27, 1953, the guns finally fell silent over the Korean peninsula. Three years of fierce struggle, costing over 600,000 lives among U.S. and allied combatants, ended with a negotiated cease-fire at Panmunjom. At that moment, in the midst of the Cold War, facing the burden of containing a hostile communist world, America could not yet see clearly all that the Korean War had achieved.

Time and history have cleared our vision. More than four decades later, we look back in awe and gratitude at what our Armed Forces and allies accomplished in Korea. Under the banner of the United Nations, they fought to defend freedom and human dignity in the Korean peninsula, demonstrating to the world's totalitarian regimes that men and women of goodwill were ready to pay the ultimate price so that others might enjoy the blessings of liberty. They helped the Republic of South Korea grow, survive, and prosper as an independent and democratic nation and a strong friend of the United States. With their quiet courage and stern resolve, American troops sowed the seeds for the triumph of democracy that is sweeping across the globe today.

Now, at long last, we have a fitting memorial to honor the achievements and the sacrifice of our Korean War veterans. From across this country and around the world, these veterans will gather in our Nation's capital to dedicate the Korean War Veterans Memorial, the enduring testament to their valor and generosity of spirit. America honors their service; we remember their sacrifice; and we are forever in their debt.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim July 27, 1995, as ''National Korean War Veterans Armistice Day.'' I call upon all Americans to observe this day with appropriate programs, ceremonies, and activities in honor of our Nation's Korean War veterans.

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



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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

**H.R. 1944/P.L. 104–19**

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