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Monday
August 28, 1995

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WASHINGTON, DC

WHEN: September 12 at 9:00 am

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RESERVATIONS: 202–523–4538

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Auditorium A
Atlanta, GA

RESERVATIONS: 404–639–3528 (Atlanta area)
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Contents

Federal Register

Vol. 60, No. 166

Monday, August 28, 1995

Agriculture Department
See Animal and Plant Health Inspection Service
See Rural Utilities Service

Animal and Plant Health Inspection Service
RULES
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle and bison—
State and area classification, 44416–44417
Tuberculosis in cattle and bison—
State and area classification, 44416
Plant-related quarantine, domestic:
Pink bollworm, 44415–44416

Architectural and Transportation Barriers Compliance Board
NOTICES
Meetings:
Access Board, 44477

Assassination Records Review Board
NOTICES
Formal determinations on records release; correction, 44477–44478

Centers for Disease Control and Prevention
NOTICES
Meetings:
Vital and Health Statistics National Committee, 44502

Coast Guard
RULES
Ports and waterways safety:
Barbers Point NAS, Oahu, HI; safety zone, 44430
Safety and security zones, etc.; list of temporary rules, 44428–44429
Waimanalo Bay, HI; safety zone, 44429–44430
Regattas and marine parades:
Ninth Coast Guard District Annual Marine Events, 44424–44427

Commerce Department
See National Institute of Standards and Technology

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Korea, 44478–44479
Singapore, 44479

Defense Department
RULES
Federal Acquisition Regulation (FAR):
Contract award implementation
Correction, 44548
Records examination authority; consolidation and revision
Correction, 44548

Education Department
PROPOSED RULES
Pupil rights protection, 44696–44701
NOTICES
Meetings:
National Educational Research Policy and Priorities Board, 44480
President's Advisory Commission on Educational Excellence for Hispanic Americans, 44479–44480
Postsecondary education:
Accrediting agencies list; Institutional Quality and Integrity National Advisory Committee; appeal of previous recommendations, 44480–44481

Employment and Training Administration
NOTICES
Adjustment assistance:
Brazos Gas Compressing Co., 44512

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission

Energy Efficiency and Renewable Energy Office
NOTICES
Consumer product test procedures; waiver petitions:
York International, 44481–44483

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
District of Columbia, 44431–44435
Water pollution control:
Clean Water Act—
Alternate test procedures for determination of total kjeldahl nitrogen in wastewater, 44670–44672
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
District of Columbia, 44452
Air quality planning purposes; designation of areas:
Idaho, 44452–44457
Water programs:
Underground injection control regulations; Class V wells determination and minor revisions and Class I wells technical corrections, 44652–44668
NOTICES
Clean Air Act:
Acid rain provisions—
Sulfur dioxide emissions limitations, 44487
Meetings:
Analytical methods promulgation streamlining; and trace metals analysis workshop, 44487–44488
Superfund program:
State deferral guidance and response to comments; availability, 44488–44489
Water pollution control; discharge of pollutants (NPDES):
Idaho; concentrated animal feeding operations; general permit, 44489–44498

Executive Office of the President
See Management and Budget Office
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Bombardier, 44419–44421
British Aerospace, 44417–44419
Scheibe Flugzeugbau GmbH, 44421–44422
Stemme, 44423–44424
PROPOSED RULES
Airworthiness directives:
Beech, 44450–44451
NOTICES
Airport noise compatibility program:
Noise exposure map—
Springfield-Beckley Municipal Airport, OH, 44537–44538
Passenger facility charges; applications, etc.:
Houghton County Memorial Airport, MI, 44538–44539

Federal Communications Commission
RULES
Radio and television broadcasting:
Indecency prohibitions, 44439
NOTICES
Agency information collection activities under OMB review, 44499

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Cortes Operating Co., S.A. de C.V. et al., 44483–44485
Natural gas certificate filings:
Colorado Interstate Gas Co. et al., 44485–44487
Applications, hearings, determinations, etc.:
Transcontinental Gas Pipe Line Corp., 44487

Federal Financial Institutions Examination Council
NOTICES
Agency information collection activities under OMB review, 44499–44500

Federal Highway Administration
RULES
Motor carrier safety standards:
Accident recordkeeping requirements; accident definition, 44439–44441
NOTICES
Freight transportation; framework for guiding policy decisions, 44539–44543445

Federal Maritime Commission
RULES
Household Goods Forwarders Association of America, Inc.; exemption from tariff and bonding requirements, 44436–44438
NOTICES
Freight forwarder licenses:
Blair, Elaine, et al., 44500

Federal Railroad Administration
PROPOSED RULES
Railroad locomotive safety standards:
Locomotive conspicuity; auxiliary external lights; minimum standards, 44457–44463
NOTICES
Exemption petitions, etc.:
Algers, Winslow & Western Railway Co., 44544
Railroad user fees, 44543
Traffic control systems; discontinuance and removal:
Consolidated Rail Corp. et al., 44544

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
FCFT, Inc., et al., 44500
NationsBank Corp., 44501
Pikeville National Corp. et al., 44501

Federal Trade Commission
PROPOSED RULES
Energy Policy and Conservation Act:
Recycled oil; test procedures and labeling standards, 44712–44717

Fish and Wildlife Service
PROPOSED RULES
Migratory bird hunting:
Late-season migratory game bird regulations; proposed frameworks, 44463–44476

Food and Drug Administration
PROPOSED RULES
Medical devices:
Electrode lead wires; standard to prevent hazardous connections between patients and electrical power sources
Correction, 44451, 44548
NOTICES
Human drugs:
Export applications—
Telfast (fexofenadine hydrochloride) tablets 60 mg, 44502–44503
Organization, functions, and authority delegations:
Drug Evaluation and Research Center, Compliance Office, 44503

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Contract award implementation
Correction, 44548
Records examination authority; consolidated and revision
Correction, 44548
NOTICES
Security mission and responsibilities of GSA and Federal Protective Service; response to Oklahoma City bombing, 44501–44502

Government Ethics Office
RULES
Conflict of interests:
Miscellaneous exemptions for Federal Government executive branch employees; personal financial interest, 44706–44709

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Public Health Service

Health Care Financing Administration
NOTICES
Medicare, medicaid, and clinical laboratories improvement:
Permit-holding laboratories exemption; New York, 44503–44507

Housing and Urban Development Department
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 44550–44631

Indian Affairs Bureau
NOTICES
Meetings:
Tribal consultation on trust funds management, 44704

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
CSX Transportation, Inc., 44512

Labor Department
See Employment and Training Administration
See Labor Statistics Bureau

Labor Statistics Bureau
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 44512–44513

Land Management Bureau
RULES
Public land orders:
California, 44435–44436
NOTICES
Realty actions; sales, leases, etc.:
Colorado, 44511–44512

Management and Budget Office
NOTICES
Race and ethnicity Federal data; classification standards, 44674–44693

Maritime Administration
RULES
Merchant marine training:
Nomination and admission of persons from American Samoa and Panama and authority for certain cost recovery, 44438–44439

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Contract award implementation
Correction, 44548
Records examination authority; consolidation and revision
Correction, 44548
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Hargens, Alan R., 44513

National Archives and Records Administration
RULES
Records management:
Electronic mail (E-mail) systems, 44634–44642
NOTICES
General records schedule 20; disposition of electronic records, 44643–44650

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Passenger car brake systems—
Hydraulic brake systems; correction, 44548

National Institute of Standards and Technology
NOTICES
Meetings:
Computer System Security and Privacy Advisory Board, 44478

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Duke Power Co. et al., 44513–44514, 44515–44516
Georgia Power Co. et al., 44514–44515
Applications, hearings, determinations, etc.:
Boston Edison Co., 44516–44517
RMI Titanium Co., 44517
Tennessee Valley Authority, 44517–44519

Office of Management and Budget
See Management and Budget Office

Presidential Documents
ADMINISTRATIVE ORDERS
Bosnia; emergency military assistance in support of Rapid Reaction Force under the Foreign Assistance Act of 1961 (Presidential Determination No. 95-34 of August 3, 1995), 44721
Food, Agriculture, Conservation and Trade Act of 1990; qualification as emerging democracies (Presidential Determination No. 95-35 of August 10, 1995), 44723
Palestine Liberation Organization; suspension of restrictions on U.S. relations (Presidential Determination No. 95-36 of August 14, 1995), 44725

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
NOTICES
Organization, functions, and authority delegations:
Centers for Disease Control and Prevention, 44507–44511

Rural Utilities Service
NOTICES
Environmental statements; availability, etc.:
Brazos Electric Power Cooperative, Inc., 44477

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 44546
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 44519–44522
American Stock Exchange, Inc.; correction, 44548
Chicago Board Options Exchange, Inc., 44522–44530
National Association of Securities Dealers, Inc., 44532–44533
Philadelphia Stock Exchange, Inc., 44530–44532, 44533–44537

Small Business Administration
NOTICES
Disaster loan areas:
Texas, 44537

Tennessee Valley Authority
NOTICES
Meetings; Sunshine Act, 44546–44547

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
PROPOSED RULES
Federal regulatory review, 44442–44449

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Maritime Administration
See National Highway Traffic Safety Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 44537
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 44537

Treasury Department
See Thrift Supervision Office

United States Information Agency
NOTICES
Art objects; importation for exhibition:
Dutch and Flemish Cabinet Galleries and Adriaen Brower: Youth Making Faces, 44544–44545
John Singleton Copley in England, 44545

Separate Parts In This Issue

Part II
Department of Housing and Urban Development, 44550–44631

Part III
National Archives and Records Administration, 44634–44650

Part IV
Environmental Protection Agency, 44652–44668

Part V
Environmental Protection Agency, 44670–44672

Part VI
Office of Management and Budget, 44674–44693

Part VII
Department of Education, 44696–44701

Part VIII
Department of Interior, Bureau of Indian Affairs, 44704

Part IX
Office of Government Ethics, 44706–44709

Part X
Federal Trade Commission, 44712–44717

Part XI
The President, 44721–44725

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 95–34 of August 3, 1995 44721

No. 95–35 of August 10, 1995 44723

No. 95–36 of August 14, 1995 44725

5 CFR

2640 44706

7 CFR

301 44415

9 CFR

77 44416

78 44416

12 CFR

Proposed Rules:

500 44442

504 44442

510 44442

515 44442

529 44442

533 44442

543 44442

545 44442

552 44442

556 44442

562 44442

563 44442

563d 44442

563g 44442

567 44442

571 44442

583 44442

584 44442

14 CFR

39 (4 documents) 44417, 44419, 44421, 44423

Proposed Rules:

39 44450

16 CFR

Proposed Rules:

311 44712

21 CFR

Proposed Rules:

898 44451

33 CFR

100 (2 documents) 44424, 44428

165 (3 documents) 44428, 44429, 44430

34 CFR

Proposed Rules:

98 44696

36 CFR

1220 44634

1222 44634

1228 44634

1234 44634

40 CFR

52 44431

136 44670

Proposed Rules:

52 44452

81 44452

144 44652

146 44652

43 CFR

Public Land Orders:

7154 44435

46 CFR

310 44438

514 44436

583 44436

47 CFR

73 44439

49 CFR

390 44439

Proposed Rules:

229 44457

50 CFR

Proposed Rules:

20 44463

Rules and Regulations

Federal Register
Vol. 60, No. 166
Monday, August 28, 1995

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 95–026–1]

Pink Bollworm Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pink bollworm regulations by removing portions of Clay, Crittenden, and Mississippi Counties in Arkansas from the list of suppressive areas for pink bollworm. We are taking this action because trapping surveys show that the pink bollworm no longer exists in these areas. This action is necessary to relieve unnecessary restrictions on the interstate movement of regulated articles from these previously regulated areas.

DATES: Interim rule effective August 28, 1995. Consideration will be given only to comments received on or before October 27, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–026–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–026–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Sidney Cousins, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, Suite 4C03, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The pink bollworm, *Pectinophora gossypiella* (Saunders), is one of the world's most destructive pests of cotton. This insect spread to the United States from Mexico in 1917 and now exists throughout most of the cotton-producing States west of the Mississippi River.

The pink bollworm regulations, contained in 7 CFR 301.52 through 301.52–10 (referred to below as the regulations), quarantine certain States and restrict the interstate movement of regulated articles from regulated areas in quarantined States for the purpose of preventing the interstate spread of pink bollworm.

Regulated areas for the pink bollworm are designated as either suppressive areas or generally infested areas. Restrictions are imposed on the interstate movement of regulated articles from both types of areas in order to prevent the movement of pink bollworm into noninfested areas.

Prior to the effective date of this document, Clay, Crittenden, and Mississippi Counties in Arkansas were designated as suppressive areas. Based on 2 years of negative trapping surveys conducted by inspectors of Arkansas State and county agencies, and by inspectors of the Animal and Plant Health Inspection Service (APHIS), we have determined that pink bollworm no longer exists in portions of these counties. We are, therefore, removing those portions of these counties from the list of suppressive areas in § 301.52–2a. The portions of the counties that remain listed as suppressive areas are described in the rule portion of this document.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to relieve unnecessary restrictions on the interstate movement of regulated articles from areas where the pink bollworm no longer exists.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

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 regulation relieves restrictions on the interstate movement of regulated articles from certain previously regulated areas in Arkansas. There are 571 cotton related commercial activities in the three counties, including cotton producers, cotton gins, seed storage facilities, and cotton harvesting and equipment dealers. Approximately 90 percent are small entities according to standards set by the Small Business Administration. They will experience a modest economic benefit as a result of this rule, since they will no longer be required to comply with the treatment and handling requirements contained in the pink bollworm regulations. We estimate that affected entities will save between $1.52 to $2.28 per cotton bale for current treatments and about $250 per piece of harvesting equipment for current fumigations.

Further, since the total production of cotton and cottonseed by the affected counties is less than 3 percent of the U.S. production of cotton, the effect on national prices is expected to be insignificant.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to

Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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 § 301.52–2a the entry for Arkansas is revised to read as follows:

§ 301.52–2a Regulated areas; suppressive and generally infested areas.

* * * * *

Arkansas

(1) *Generally infested area.* None.

(2) *Suppressive area.*

Clay County. That portion of the county bounded by Highway 90 west from the Missouri State line to Highway 139, Highway 139 north to the junction of Highways 62 and 1, and Highway 1 east to the Missouri State line.

Crittenden County. T. 8 N., R. 8 E.

Mississippi County. That portion of the county bounded by Highway 120 west from the Mississippi River to Highway 61, Highway 61 south to Highway 158, Highway 158 west to Highway 77, Highway 77 north to Highway 119, and Highway 119 north to the Missouri State line.

* * * * *

Done in Washington, DC, this 21st day of August 1995.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–21188 Filed 8–25–95; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Part 77

[Docket No. 95–020–2]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of North Carolina from a modified accredited State to an accredited-free State. We have determined that North Carolina meets the criteria for designation as an accredited-free State.

EFFECTIVE DATE: September 27, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD, 20737–1231, (301) 734–7727.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on April 13, 1995 (60 FR 18728–18729, Docket No. 95–020–1), we amended the tuberculosis regulations in 9 CFR part 77 by removing North Carolina from the list of modified accredited States in § 77.1 and adding it to the list of accredited-free States in that section.

Comments on the interim rule were required to be received on or before June 12, 1995. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 77.1 and that was published at 60 FR 18728–18729 on April 13, 1995.

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

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

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–21186 Filed 8–25–95; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Part 78

[Docket No. 95–033–2]

Brucellosis in Cattle; State and Area Classifications; Nebraska

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Nebraska from Class A to Class Free. The interim rule was necessary to relieve certain restrictions on the interstate movement of cattle from Nebraska.

EFFECTIVE DATE: September 27, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Gilsdorf, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, vs, APHIS, USDA, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737–1236; (301) 734–4918.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on May 31, 1995 (60 FR 28322–28323, Docket No. 95–033–1), we amended the brucellosis regulations in 9 CFR part 78 by removing Nebraska from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.1(a).

Comments on the interim rule were required to be received on or before July 31, 1995. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim

rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 78.41 and that was published in 60 FR 28322–28323 on May 31, 1995.

Authority: 21 U.S.C. 111–114a-1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

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

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–21187 Filed 8–25–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–135–AD; Amendment 39–9343; AD 95–17–13]

Airworthiness Directives; British Aerospace Model BAe 146 and Model Avro 146–RJ Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146 and Model Avro 146–RJ airplanes. This action requires modification of the left- and right-hand elevators to improve water drainage. This amendment is prompted by reports that elevator oscillations and resultant airplane pitch oscillations have occurred due to the elevator balance changes as a result of accumulation of water in the elevators. The actions specified in this AD are intended to minimize accumulation of water in the elevators, which could lead to elevator and airplane pitch oscillations with a subsequent reduction of controllability of the airplane and damage to the tail surface structure.

DATES: Effective September 12, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 12, 1995.

Comments for inclusion in the Rules Docket must be received on or before October 27, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–135–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe 146 and Model Avro 146–RJ airplanes. The CAA advises that it received several reports indicating that elevator oscillations have occurred, which resulted in airplane pitch oscillations. Investigation revealed that, when the airplane had completed steep climb maneuvers, water had accumulated in the left- and right-hand elevators. Accumulation of water, if not corrected, may upset the balance of the elevators, which could result in elevator oscillation and subsequent airplane pitch oscillations; this condition could result in reduced controllability of the airplane or damage to the tail surface structure.

British Aerospace Regional Aircraft Limited, Avro International Division, has issued Service Bulletin SB.55–13–01490B, dated July 7, 1995, which describes procedures for modification of the left- and right-hand elevators. The modification involves the following actions:

1. Drilling, reaming, and deburring new drain holes in the underside of the left- and right-elevators;
2. Applying protective treatment to the left- and right-hand elevators;
3. Performing a visual inspection to determine if all of the seams on the elevators are sealed, and resealing, if necessary; and
4. Plugging (blanking off) certain existing drain holes with a grommet (for certain airplanes).

Accomplishment of this modification will improve the drainage of water from the elevators and minimize the accumulation of water in the elevators.

The CAA classified the service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom 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, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, 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 an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to minimize accumulation of water in the elevators, which could lead to elevator oscillations. This AD requires modification of the left- and right-hand elevators (Mod. No. HCMO1490B). The actions are required to be accomplished, in part, in accordance with the service bulletin described previously.

In addition, the FAA has received a recommendation from the CAA that certain additional procedures be accomplished concurrent with the modification. These procedures have been added to this AD.

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

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA

points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

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–135–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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95–17–13 British Aerospace Regional Aircraft Limited, AVRO International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft Limited): Amendment 39–9343. Docket 95–NM–135–AD.

Applicability: Model British Aerospace BAe 146 and Model Avro 146–RJ airplanes; as listed in British Aerospace Service Bulletin SB.55–13–01490B, dated July 7, 1995; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

Note 2: This AD references certain portions of a British Aerospace service bulletin for applicability and modification information. In addition, this AD specifies further detailed instructions, and in certain cases, specifies that a different sealant be used. Where there are differences between the AD and the service bulletin, the AD prevails.

To minimize accumulation of water in the elevators, which could lead to elevator and airplane pitch oscillations with a subsequent reduction of controllability of the airplane and tail surface structural damage.

(a) Within 30 days after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD, as applicable.

(1) For all airplanes: Accomplish the following requirements of paragraph (a)(1)(i), (a)(2)(ii), (a)(3)(iii) of this AD:

(i) Drill, ream, and deburr new drain holes in the left- and right-elevators in accordance with British Aerospace Service Bulletin SB.55–13–01490B, dated July 7, 1995. The following procedures shall be accomplished in addition to procedures specified in the service bulletin. Identify the drain hole positions to be added in accordance with Drawing No. 1 of the service bulletin. Where drain holes already exist in the same rib bay within a distance of 2 inches of the new drain hole position defined in the service bulletin, no additional drain holes shall be added. Drawing No. 1 of the service bulletin shows the required number and bay locations of drain holes after the accomplishment of this paragraph. No drain holes other than those specified in drawing No. 1 shall be added.

(ii) Apply protective treatment in the areas of the new drain holes in the left- and right-hand elevators in accordance with the service bulletin.

(iii) Perform a visual inspection to determine if all of the seams on the elevator are sealed as specified in Drawing No. 5 of the service bulletin. Accomplish the inspection in accordance with the service bulletin.

(A) If all the seams of the elevators are sealed, as specified in Drawing No. 5 of the service bulletin, no further action is required by this paragraph.

(B) If any seam is not sealed, as specified in Drawing No. 5 of the service bulletin, prior

to further flight, seal the seam in accordance with the procedures specified in the service bulletin. Only Thiokol sealant PR–1431 Type 1, PR–1431 Type 2, PR–1431–T, PR–1431–T6, PR–1422B–2NA, or PR–1422B–4NA shall be used to seal the seam.

(2) For airplanes on which Modification HCM00912A has been accomplished: At the positions shown in Drawing No. 4 of the service bulletin, plug (blank off) the drain holes with a grommet, fill the inside of each grommet with sealant, and insert it into the drain hole to be plugged, in accordance with the procedures specified in the service bulletin. Only Thiokol sealant PR–1431 Type 1, PR–1431 Type 2, PR–1431–T, PR–1431–T6, PR–1422B–2NA or PR–1422B–4NA shall be used to fill the inside of each grommet.

(b) As of the effective date of this AD, no person shall install any elevator on any airplane affected by this AD unless that elevator has been modified in accordance with this AD.

(c) 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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(e) The actions shall be done in accordance with British Aerospace Service Bulletin SB.55–13–01490B, dated July 7, 1995, where specified. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Holding, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 12, 1995.

Issued in Renton, Washington, on August 15, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–20629 Filed 8–25–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–139–AD; Amendment 39–9344; AD 95–17–14]

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and –3R) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–1A11, CL–600–2A12, and CL–600–2B16 series airplanes. This action requires functional testing of the brake of the horizontal stabilizer trim actuator (HSTA); and exercising the pitch trim system, revising the FAA-approved Airplane Flight Manual (AFM), operational testing of the HSTA, and replacing the HSTA or horizontal stabilizer trim control unit, if necessary. This amendment is prompted by reports of overspeed annunciation of the pitch trim due to slippage of the no-back device on the HSTA. The actions specified in this AD are intended to prevent uncommanded movement of the HSTA due to failure of the no-back device on the HSTA to operate properly; this condition could adversely affect the controllability of the airplane.

DATES: Effective September 12, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 12, 1995.

Comments for inclusion in the Rules Docket must be received on or before October 27, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–139–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, 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, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and –3R) series airplanes. Transport Canada Aviation advises that it has received reports of overspeed annunciation of the pitch trim. Each time such annunciation occurred, the horizontal stabilizer trim actuator (HSTA) mechanical brake prevented uncommanded movement of the HSTA, i.e., HSTA runaway. Investigation has revealed that the reported overspeed annunciation of the pitch trim may be attributed to slippage of the no-back device on the HSTA. Further investigation revealed that the no-back device on the HSTA failed to operate properly at low temperatures, but operated properly at ambient temperatures above zero degrees centigrade. This condition, if not corrected, could result in uncommanded movement of the HSTA, which could adversely affect the controllability of the airplane.

Bombardier has issued Alert Service Bulletins A600–0645 (for Model CL–600–1A11 series airplanes), and A601–0443 (for Model CL–600–2A12 and CL–600–2B16 series airplanes), both dated January 11, 1995, which describe procedures for an operational test of the HSTA brake, and replacement of the HSTA or horizontal stabilizer trim control unit (HSTCU) with a serviceable unit. Transport Canada Aviation approved these service bulletins and issued Canadian airworthiness directive CF–95–02, dated February 28, 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 an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent uncommanded movement of the HSTA. This AD requires repetitive functional testing of the HSTA brake for all airplanes. If certain conditions are found to exist during the functional tests, this AD also requires exercising of the pitch trim system, revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM), operational testing of the HSTA, and replacing the HSTA or HSTCU with a serviceable unit. Accomplishment of the replacement terminates the requirement to exercise the pitch trim system and revise the AFM.

Operational testing of the HSTA and replacement of the HSTA or HSTCU are required to be accomplished in accordance with the applicable alert service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

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–139–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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–17–14 Bombardier, Inc. (Formerly Canadair): Amendment 39–9344. Docket 95–NM–139–AD.

Applicability: Model CL–600–1A11 (CL–600) series airplanes having serial numbers 1004 through 1085 inclusive; Model CL–600–2A12 (CL–601) series airplanes having serial numbers 3001 through 3066 inclusive; and Model CL–600–2B16 (CL–601–3A and –3R) series airplanes having serial numbers 5001 through 5137 inclusive, and 5139 through 5299 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded movement of the horizontal stabilizer trim actuator (HSTA), accomplish the following:

(a) Within 20 hours time-in-service after the effective date of this AD, perform the following ''Functional Test Procedures of the HSTA Brake'':

(1) Press the CHAN 1 INOP/CHAN 2 INOP switch/light and then the OVSP/CHNG CHAN switch/light on the center pedestal control panel.

(2) Set and hold the pitch trim switch on the pilot's control wheel until the stabilizer is in full NOSE UP position.

(3) Set and hold the pitch trim switch on the pilot's control wheel to NOSE DOWN position and, while the stabilizer is moving, press the PITCH TRIM DISC switch on the pilot's control wheel when the needle on the stabilizer trim position indicator reaches the first marking of the take-off configuration green band. Verify that both CHAN INOP lights are on.

(4) Verify that the stabilizer over-travel is less than one degree, as read on the stabilizer trim position indicator on the center instrument panel.

Note 2: One increment on the stabilizer trim position indicator is equal to one degree of stabilizer travel.

(i) If the stabilizer over-travel is less than or equal to one degree, the pitch trim brake performance meets the ground performance requirements and is considered serviceable.

(ii) If the stabilizer over-travel is more than one degree, dispatch is prohibited. Correction is required prior to further flight, in accordance with Bombardier Alert Service Bulletin A600–0645, dated January 11, 1995 (for Model CL–600–1A11 series airplanes), or A601–0443, dated January 11, 1995 (for Model CL–600–2A12 and CL–600–2B16 series airplanes), as applicable.

(b) For airplanes on which the stabilizer over-travel is shown to be equal to or less than 1 degree during the functional test required by paragraph (a) of this AD, and no overspeed annunciation has been reported previously, repeat the functional test thereafter at intervals not to exceed 100 hours time-in-service.

(c) For airplanes on which the stabilizer over-travel is shown to be equal to or less than 1 degree during the functional test required by paragraph (a) of this AD, and overspeed annunciation has been reported previously, accomplish paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD.

(1) Prior to each flight, exercise the pitch trim system by accomplishing the following: ''Command full NOSE DOWN, then full NOSE UP and re-position.''

(2) Prior to further flight following accomplishment of the functional test required by paragraph (a) of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following information. This may be accomplished by inserting a copy of this AD in the AFM.

''1. Do not engage autopilot at an altitude below 1,000 feet AGL.

''2. Monitor 8 CH annunciator for FLT CONT light.

''3. Maximum flap setting to be used is Flap 20 degrees.''

(3) Within 50 hours time-in-service after the effective date of this AD, perform an operational test to identify the unserviceable HSTA or horizontal stabilizer trim control unit (HSTCU) and replace it with a serviceable unit, in accordance with Bombardier Alert Service Bulletin A600–0645, dated January 11, 1995 (for Model CL–600–1A11 series airplanes), or A601–0443, dated January 11, 1995 (for Model CL–600–2A12 and CL–600–2B16 series airplanes), as applicable. Replacement of the unserviceable unit with a serviceable unit constitutes terminating action for the requirements of paragraphs (c)(1) and (c)(2) of this AD. Following such replacement, exercise of the pitch trim system may be discontinued and the limitation may be removed from the AFM.

(4) Thereafter at intervals not to exceed 100 hours time-in-service repeat the functional test of the HSTA brake as specified in paragraph (a) of this AD.

(d) For airplanes on which the stabilizer over-travel is shown to be more than 1 degree during the functional test required by paragraph (a) of this AD, accomplish the requirements of paragraphs (d)(1) and (d)(2) of this AD.

(1) Prior to further flight, perform an operational test to identify the unserviceable HSTA or HSTCU and replace it with a serviceable unit, prior to further flight, in accordance with Bombardier Alert Service Bulletin A600–0645, dated January 11, 1995 (for Model CL–600–1A11 series airplanes), or A601–0443, dated January 11, 1995 (for Model CL–600–2A12 and CL–600–2B16 series airplanes), as applicable.

(2) Thereafter at intervals not to exceed 100 hours time-in-service repeat the functional test of the HSTA brake as specified in paragraph (a) in this AD.

(e) 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(f) 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.

(g) The operational test and replacement shall be done in accordance with Bombardier Alert Service Bulletin A600–0645, dated January 11, 1995, or Bombardier Alert Service Bulletin A601–0443, dated January 11, 1995, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 12, 1995.

Issued in Renton, Washington, on August 15, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–20632 Filed 8–25–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–CE–35–AD; Amendment 39–9349; AD 95–18–01]

Airworthiness Directives; Scheibe Flugzeugbau GmbH SF34 and SF34B Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Scheibe Flugzeugbau GmbH SF34 and SF34B gliders. This action requires adding armature (supportive covering) to both wings, modifying the root rib of the left wing and incorporating changes and operating limitations to the flight manual. Failure of the left wing root rib on one of the affected gliders while in flight prompted this action. The actions specified by this AD are intended to prevent fatigue failure of the wing, which could result in loss of control of the glider.

DATES: Effective October 16, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 16, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Scheibe Flugzeugbau GmbH, August Pfaltz—Strasse 23, Dachau, Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 94–CE–35–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Scheibe Flugzeugbau GmbH SF34 and SF34B gliders was published in the

Federal Register on March 30, 1995 (60 FR 16398). The action proposed to require adding armature (supportive covering) to both wings, modifying the root rib of the left wing, and incorporating changes and operating limitations to the flight manual. Accomplishment of the proposed action would be in accordance with Scheibe Technical Note (TN) No. 336–2, dated March 10, 1989.

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

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

The FAA estimates that 2 gliders in the U.S. registry will be affected by this AD, that it will take approximately 20 workhours per glider to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $50 per glider. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,500 ($1,250 per glider). This figure is based upon the assumption that no affected owner/operator of the affected gliders has incorporated the proposed modification.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: U.S.C. 106(g); 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–18–01 Scheibe Flugzeugbau Gmbh: Amendment 39–9349; Docket No. 94–CE–35–AD.

Applicability: Models SF34 and SF34B gliders (serial numbers 5102 through 5131), certificated in any category.

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

Compliance: Required within the next 50 hours time in service (TIS) after the effective date of this AD, unless already accomplished.

To prevent fatigue failure of the wing, which could result in loss of control of the glider, accomplish the following:

(a) Add armature (supportive covering) to both wings in accordance with the job instructions section of Scheibe Technical Note (TN) No. 336–2, dated March 10, 1989.

(b) Modify the root rib of the left wing in accordance with the job instructions section of Scheibe TN No. 336–2, dated March 10, 1989.

(c) Accomplish the following flight manual changes:

(1) Replaces pages 1 and 13 of the flight manual with revised pages 1 and 13 included with Scheibe TN No. 336–2, dated March 10, 1989.

(2) Replace pages 1 and 11 in the Instructions for Continued Airworthiness with the revised pages 1 and 11 included with Scheibe TN No. 336–2, dated March 10, 1989.

(3) In page 8 of the flight manual, add 1 kg to the current empty weight of the glider and deduct 1 kg from the current maximum load as specified in paragraph 3 of the Instructions section of Scheibe TN No. 336–2, dated March 10, 1989.

(4) Remove existing operating limitations and incorporate new operating limitations into the Limitations section of the flight manual as specified in paragraph 4 of the Instructions section of Scheibe TN No. 336–2, dated March 10, 1989.

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety, may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106.

The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) The modifications required by this AD shall be done in accordance with Scheibe Technical Note 336–2, dated March 10, 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Scheibe Flugzeugbau GmbH, August Pfaltz—Strasse 23, Dachau, Germany. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(g) This amendment (39–9349) becomes effective on October 16, 1995.

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

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–20804 Filed 8–25–95; 8:45 am]

BILLING CODE 4910–13–U–M

14 CFR Part 39

[Docket No. 94–CE–32–AD; Amendment 39–9338; AD 95–17–08]

Airworthiness Directives; Stemme GmbH S10 Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Stemme GmbH (Stemme) S10 gliders. This action requires modifying the rudder control cable system. Rupture of a turnbuckle eye bolt in the rudder control cable system on one of the affected gliders prompted this action. The actions specified by this AD are intended to prevent rudder control cable system failure caused by rupture of the turnbuckle eye bolt, which, if not detected and corrected, could result in loss of rudder control and eventual loss of control of the glider.

DATES: Effective October 10, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 10, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Stemme GmbH & Co. KG, Flugplatz Gebaude 47, D–15344 Staussberg, Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 94–CE–32–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Stemme S10 gliders was published in the **Federal Register** on March 30, 1995 (60 FR 16395). The proposal would require modifying the rudder control cable system in accordance with Stemme Service Bulletin (SB) A31–10–018 (pages 4–6), dated June 3, 1994.

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

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

The FAA estimates that 3 gliders in the U.S. registry will be affected by this AD, that it will take approximately 4 workouts per glider to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $60 per glider. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $900 ($300 per glider). This figure is based upon the assumption that no affected owner/operator of the affected gliders has accomplished the proposed modification.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–17–08. Stemme GmbH: Amendment 39–9338; Docket No. 94–CE–32–AD.

Applicability: Model S10 Gliders (serial numbers 10–03 through 10–58), certificated in any category.

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

Compliance: Required upon the accumulation of 150 hours time-in-service (TIS) or within the next 20 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished.

To prevent rudder control cable system failure caused by rupture of the turnbuckle eye bolt, which, if not detected and corrected, could result in loss of rudder control, accomplish the following:

(a) Modify the rudder control cable system in accordance with the instructions in Stemme Service Bulletin A31–10–018 (pages 4–6), dated June 3, 1994.

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

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

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

(d) The modifications required by this AD shall be done in accordance with Stemme Service Bulletin A31–10–018 (pages 4–6), dated June 3, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Stemme GmbH & Co. KG, Flugplatz Gebaude 47, D–15344 Staussberg, Germany. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(f) This amendment (39–9338) becomes effective on October 10, 1995.

Issued in Kansas City, Missouri, on August 10, 1995.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–20276 Filed 8–25–95; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 100

[CGD 09–95–005]

Special Local Regulations; Great Lakes Annual Marine Events

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising its list of annual marine events which occur within the Ninth Coast Guard District. Publication of this list in part 100 of the Code of Federal Regulations will establish permanent special local regulations for marine events within the Ninth Coast Guard District which recur on an annual basis and which have been determined by the District Commander to require the issuance of special local regulations. This action is being taken to ensure the safety of life, limb and property during each event, while avoiding the necessity of publishing a separate temporary regulation each year for each event. The list reflects the approximate dates and locations of each annual marine event.

EFFECTIVE DATE: This regulation is effective September 27, 1995.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Second Class Jeffrey M. Yunker, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, 1240 East Ninth Street, Cleveland, Ohio, 44199–2060, (216) 522–3990.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are Lieutenant Junior Grade Byron D. Willeford, Ninth Coast Guard District, project officer, Aids to Navigation and Waterway Management Branch and Lieutenant Charles D. Dahill, Ninth Coast Guard District, project attorney, Legal Office.

Regulatory History

On June 21, 1995, the Coast Guard published a notice of proposed rulemaking entitled Special Local Regulations; Great Lakes Annual Marine Events in the **Federal Register** (60 FR 32288). The deadline for the submission of comments was August 7, 1995. The Coast Guard received no letters commenting on the proposal. A public hearing was not requested and one was not held. The Commander Ninth Coast Guard District has decided to publish the final rule as proposed.

Background and Purpose

This rulemaking updates an existing list of anticipated annual events. Each year various public and private organizations sponsor marine events on the navigable waters of the United States within the Ninth Coast Guard District. These events include slow moving boat parades, sailboat races, high speed hydroplane races, fireworks displays, and other water related events. The listed events are held in approximately the same location during the same general period of time each year. Exact times and dates will be published in the Local Notice to Mariners instead of being published in this final rule. This will streamline the marine event process for those regattas and marine events that have very little annual variation and will significantly reduce the Coast Guard's administrative burden for managing these type events with no reduction in services to the maritime community. The nature of each event is such that special local regulations are deemed necessary to ensure the safety of life, limb, and property on and adjacent to navigable waters during the events. Group Commanders have consulted and will continue to consult with parties potentially affected by any significant changes to the nature, date, time, and location proposed by an event sponsor for any of the events covered in this rule.

Table 1 gives the approximate dates, times, and locations for the annual events listed. Each year, one or more Local Notice to Mariners will be published giving the exact dates, times, and locations for the annual events. It should be noted that Table 1 in the regulation is not a complete list of all marine events that will occur in the Ninth Coast Guard District. It does not include events which the District Commander has determined do not require establishment of regulations for the safety of life, limb, and property on or adjacent to navigable waters. It also does not include nonannual events or events which have not been scheduled in time for this publication.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard is simply revising its list of annual marine events. The listing itself will not affect the environment. Upon receipt of applications, the Coast Guard will conduct an environmental analysis for each event in accordance with section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, and the Coast Guard Notice of final agency procedures and policy for categorical exclusions found at 59 FR 38654 (July 29, 1994).

Economic Assessment and Certification

These regulations are not a significant regulatory action under section 3(f) of Executive Order 12866 and do not require an assessment of potential costs and benefits under section 6(a)(3) of that order. They have been exempted from review by the Office of Management and Budget under that order. They are not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of these regulations to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the DOT is unnecessary.

Collection of Information

These regulations will impose no collection information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Final Regulations

In consideration of the foregoing, the Coast Guard is amending Part 100 of

Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.901 is amended by revising Table 1 to read as follows:

§ 100.901 Great Lakes Annual Marine Events.

* * * * *

Table 1

Group Buffalo, NY

Fireworks by Grucci
Sponsor: New York Power Authority
Date: Last Weekend of July
Location: Lake Ontario, Wright's Landing/Oswego Harbor, NY within an 800-foot radius of the fireworks launching platform located in approximate position 43°28′10″ N 076°31′04″ W. (NAD 83).

Flagship International Kilo Speed Challenge
Sponsor: Presque Isle Powerboat Racing Association
Date: 3rd or 4th weekend of June
Location: That portion of Lake Erie, Presque Isle Bay, south of a line drawn from 42°08′54″ N, 080°05′42″ W; to 42°07′ N 080°21′ W will be a regulated area. That portion of Lake Erie, Presque Isle Bay, north of a line drawn from 42°08′54″ N 080°05′42″ W; to 42°07′ N 080°21′ W (NAD 83) will be a ''caution area''. All vessels transiting the caution area will be operated at bare steerageway, keeping the vessel's wake at a minimum, and will exercise a high degree of caution in the area. The bay entrance will not be affected.

Flagship International Offshore Challenge
Sponsor: Preque Isle Powerboat Racing Association
Date: 3rd or 4th weekend of June
Location: That portion of Lake Erie, Presque Isle Bay, Entrance Channel, and the enclosed area from Erie Harbor Pier Head Light (LLNR 3430) northeast to 42°12′48″ N 079°57′24″ W (NAD 83), thence south to shore just east of Shades Beach.

Friendship Festival Airshow
Sponsor: Friendship Festival
Date: 4th of July holiday
Location: That portion of the Niagara River and Buffalo Harbor from:

Latitude	*Longitude*
42°54.4′ N	078°54.1′ W, thence to
42°54.4′ N	078°54.4′ W, thence along the International Border to
42°52.9′ N	078°54.9′ W, thence to
42°52.5′ N	078°54.3′ W, thence to
42°52.7′ N	078°53.9′ W, thence to
42°52.8′ N	078°53.8′ W, thence to
42°53.1′ N	078°53.6′ W, thence to
42°53.2′ N	078°53.6′ W, thence to
42°53.3′ N	078°53.7′ W, thence along the breakwall to
42°54.4′ N	078°54.1′ W.

(NAD 83).

Geneva Offshore Grand Prix
Sponsor: Great Lakes Offshore Powerboat Racing Association
Date: 3rd or 4th weekend of May
Location: That portion of Lake Erie from:

Latitude	*Longitude*
41°51.5′ N	080°58.2′ W, thence to
41°52.4′ N	080°53.4′ W, thence to
41°53′ N	080°53.4′ W, thence to
41°52.2′ N	080°58.2′ W, thence to
41°51.5′ N	080°58.2′ W.

(NAD 83).

Sodus Bay 4th of July Fireworks
Sponsor: Sodus Bay Historical Society
Date: 4th of July holiday
Location: Lake Ontario, within a 500 foot radius around a barge anchored in approximate position 43°15.73′ N 076°58.23′ W (NAD 83), in Sodus Bay.

Tallship Erie
Sponsor: Erie Maritime Programs, Inc.
Date: 1st or 2nd weekend of July
Location: That portion of Lake Erie, Presque Isle Bay Entrance Channel and Presque Isle Bay from:

Latitude	*Longitude*
42°10′ N	080°03′ W, thence to
42°08.1′ N	080°07′ W, thence to
42°07.9′ N	080°06.8′ W, thence east along the shoreline and structures to:
42°09.2′ N	080°02.6′ W, thence to
42°10′ N	080°03′ W.

(NAD 83).

Thomas Graves Memorial Fireworks Display
Sponsor: Port Bay Improvement Association
Date: 1st or 2nd weekend of July
Location: That portion of Lake Ontario, Port Bay Harbor, NY within a 500 foot radius surrounding a barge anchored in approximate position 43°17′46″ N. 076°50′02″ W. (NAD 83).

Thunder Island Offshore Challenge
Sponsor: Thunder on the Water Inc.
Date: 3rd or 4th weekend of June
Location: That portion of Lake Ontario, Oswego Harbor from the West Pier Head Light (LLNR 2080) north to:

Latitude	*Longitude*
43°29′02″ N	076°32′04″ W, thence to
43°26′18″ N	076°39′30″ W, thence to
43°24′55″ N	076°37′45″ W, thence along the shoreline to the West Pier Head Light (LLNR 2080).

(NAD 83).

We Love Erie Days Fireworks
Sponsor: We Love Erie Days Festival, Inc.
Date: 3rd weekend of August
Location: That portion of Lake Erie, Erie Harbor, within a 900 foot radius, surrounding the Erie Sand and Gravel Pier, located in position 42°08′16″ N 080°05′40″ W. (NAD 83).

Group Detroit, MI

Bay City Fireworks Display
Sponsor: Bay City Fraternal Order of Police, Lodge 103
Date: 4th of July holiday
Location: Saginaw River, from the Veterans Memorial Bridge to approximately 1000 yards south to the River Walk Pier, near Bay City, MI.

Detroit APBA Gold Cup Race
Sponsor: Spirit of Detroit Association
Date: 1st or 2nd weekend of June
Location: Detroit River, between Belle Isle and the U.S. shoreline, near Detroit, MI. Bound on the west by the Belle Isle Bridge and on the east by a north-south line drawn through the Waterworks Intake Crib Light (LLNR 1022).

Buick Watersports Weekend
Sponsor: Adore Ltd. and APBA
Date: 3rd or 4th weekend of July
Location: That portion of the Saginaw River from the Liberty Bridge on the north to the Veterans Memorial Bridge on the south, near Bay City, MI.

Cleveland Charity Classic
Sponsor: Lake Erie Offshore Racing, Ltd.
Date: 3rd or 4th weekend of July

Location: That portion of Lake Erie, Cleveland Harbor from the Cleveland Waterworks Intake Crib Light (LLNR 4030) to:

Latitude	*Longitude*
41°30.7′ N	081°43.1′ W, (West Pierhead Light, LLNR 4160), thence along the breakwater to,
41°30.4′ N	081°42.9′ W, (West Breakwater Light, LLNR 4175), thence to,
41°30.2′ N	081°42.8′ W, (West Pier Light, LLNR 4185), thence along the shoreline and structures to,
41°32.5′ N	081°38.3′ W, (Disposal Light B, LLNR 4045), thence to,
41°33′ N	081°45′ W, (Cleveland Waterworks Intake Crib Light LLNR 4030). (NAD 83).

Cleveland National Air Show

Sponsor: Cleveland National Air Show

Date: Labor Day Weekend

Location: That portion of Lake Erie and Cleveland Harbor (near Burke Lakefront Airport) from shore position 41°31′52″ N 081°39′17.5″ W, northwest to 41°32′19″ N 081°39′42.3″ W, then southwest to the East Pierhead Light (LLNR 4075), thence southeast on a bearing of 145 degrees true to shore. (NAD 83).

Cleveland Offshore Grand Prix

Sponsor: Great Lakes Offshore Powerboat Racing Association

Date: 1st or 2nd weekend of August

Location: That portion of Lake Erie, Cleveland Harbor from the Cleveland Waterworks Intake Crib Light (LLNR 4030) to:

Latitude	*Longitude*
41°30.7′ N	081°43.1′ W, (West Pierhead Light, LLNR 4160), thence along the breakwater to,
41°30.4′ N	081°42.9′ W, (West Breakwater Light, LLNR 4175), thence to,
41°30.2′ N	081°42.8′ W, (West Pier Light, LLNR 4185), thence along the shoreline and structures to,
41°32.5′ N	081°38.3′ W, (Disposal Light B, LLNR 4045), thence to,
41°33′ N	081°45′ W, (Cleveland Waterworks Intake Crib Light LLNR 4030) (NAD 83).

Flatsfest

Sponsor: Flats Riverfest Corporation

Date: 3rd or 4th weekend of July

Location: Cuyahoga River, Conrail Railroad Bridge at Mile 0.8 above the mouth of the river to the Eagle Avenue Bridge, near Cleveland, OH.

International Bay City River Roar

Sponsor: Bay City River Roar, Inc.

Date: 3rd or 4th weekend of June

Location: That portion of the Saginaw River from the Liberty Bridge on the north to the Veterans Memorial Bridge on the south, near Bay City, MI

International Freedom Festival Fireworks

Sponsor: Detroit Renaissance Foundation

Date: 3rd or 4th week of June

Location: The Detroit River between 083°03′ W (Cobo Hall) and 083°01′27″ W (NAD 83) (Huron Cement).

International Freedom Festival Tug Across the River

Sponsor: Detroit Renaissance Foundation

Date: 3rd or 4th week of June

Location: That portion of the Detroit River bounded on the south by the International Boundary, on the west by 083°03′ W, on the east by 083°02′ W (NAD 83) and on the north by the U.S. shoreline.

Port Clinton Offshore Grand Prix

Sponsor: Great Lakes Offshore Powerboat Racing Association

Date: 1st or 2nd weekend of July

Location: That portion of western Lake Erie:

Latitude	*Longitude*
41°31.2′ N	082°56.1′ W, thence along the shoreline and structures to
41°33.3′ N	082°51.3′ W, thence to
41°33.3′ N	082°52.8′ W, thence to
41°31.2′ N (NAD 83).	082°56.1′ W.

Port Huron to Mackinac Island Race

Sponsor: Bayview Yacht Club

Date: 2nd or 3rd weekend of July

Location: That portion of the Black River, St. Clair river, and Lower Lake Huron from:

Latitude	*Longitude*
42°58.8′ N	082°26′ W, to
42°58.4′ N	082°24.8′ W, thence northward along the International Boundary to
43°02.8′ N	082°23.8′ W, to
43°02.8′ N	082°26.8′ W, thence southward along the U.S. shoreline to
42°58.9′ N	082°26′ W, thence to
42°58.8′ N (NAD 83).	082′26′ W.

Thunder on the River Hydroplane Race

Sponsor: Toledo Prop Spinners

Date: 3rd or 4th weekend of August

Location: Maumee River, between the Martin Luther King and Anthony Wayne bridges, near Toledo, OH

Toledo 4th of July Fireworks

Sponsor: City of Toledo

Date: 4th of July holiday

Location: Maumee River, between the Martin Luther King and Anthony Wayne bridges, near Toledo, OH

Toledo Labor Day Fireworks

Sponsor: Reams Broadcasting Corporation

Date: Labor Day

Location: Maumee River, between the Martin Luther King and Anthony Wayne bridges, near Toledo, OH

Group Sault Ste. Marie, MI

Bridgefest Regatta

Sponsor: Bridgefest Committee

Date: 2nd weekend of June

Location: Keweenaw Waterway, from the Houghton Hancock Lift Bridge to 100 yards west of the bridge, near Houghton, MI

Duluth Fourth Fest Fireworks

Sponsor: Office of the Mayor, Duluth, MN

Date: 4th of July Holiday

Location: That portion of the Duluth Harbor Basin Northern Section bounded on the south by a line drawn on a bearing of 087° true from the Cargill Pier through Duluth Basin Lighted Buoy #5 (LLNR 15905) to the opposite shore on the north by the Duluth Aerial Bridge. That portion of Duluth Harbor Basin Northern Section within 600 yards of position 46°46′47″ N 092°06′10″ W. (NAD 83).

July 4th Fireworks

Sponsor: City of Sault Ste Marie, MI

Date: 4th of July holiday

Location: That portion of the St. Marys River, Sault Ste. Marie, MI within a 1000 foot radius of Brady Park, located on the south shore of the river. These waters are enclosed by the Locks to the west and to the east from a line drawn from the pier light of the east center pier to the

U.S. Coast Guard Base to the southeast.

National Cherry Festival Blue Angels Air Demonstration
Sponsor: National Cherry Festival Inc.
Date: 1st week of July
Location: That portion of the Western arm of the Grand Traverse Bay, Traverse City, MI, enclosed by straight lines connecting the following geographic coordinates:

Latitude	*Longitude*
44°46.8′ N	085°38.3′ W, to
44°46.5′ N	085°35.5′ W, to
44°46′ N	085°35.8′ W to
44°46.5′ N	085°38.5′ W, thence to
44°46.8′ N	085°38.3′ W.

(NAD 83).

Venetian Festival Yacht Parade
Sponsor: Charlevoix Chamber of Commerce
Date: 3rd or 4th weekend of July
Location: That portion of the upper and lower section of the Pine River, to include Round Lake, from:

Latitude	*Longitude*
45°19.3′ N	085°15.9′ W, (North Pierhead Light, LLNR 17920) thence to,
45°18.9′ N	085°14.7′ W, (Pine River Light 3, LLNR 17945) thence to,
45°18.8′ N	085°14.7′ W, (Pine River Channel Lighted Buoy 2, LLNR 17950) thence to,
45°19′ N	085°15.9′ W, (South Pierhead Light, LLNR 17925) thence to,
45°19.3′ N	085°15.9′ W, (NAD 02).

Group Grand Haven, MI

Coast Guard Festival Fireworks
Sponsor: Grand Haven Coast Guard Festival, Inc.
Date: 1st weekend of August
Location: That portion of the Grand River, Grand Haven, MI, from a north-south line drawn from the North Pierhead Light Number 1 (LLNR 18045) on the north to the South Pierhead Entrance Light (LLNR 18035) on the south, thence down river to the US 31 Bascule Bridge (mile 2.89).

Grand Haven Area Jaycees Annual 4th of July Fireworks Display
Sponsor: Grand Haven Area Jaycees
Date: 1st week of July
Location: That portion of the Grand River, Grand Haven, MI from the pier heads (mile 0.0) to the US 31 Bascule Bridge (mile 2.89).

Tulip Time Fireworks and Water Ski Show
Sponsor: Holland Tulip Time Festival Inc.
Date: 1st weekend of May
Location: That portion of Lake Macatawa, Holland Harbor, east of a north-south line, from shore to shore, at position 086°08′ W. (NAD 83).

Tulip Time Water Ski Show
Sponsor: Holland Tulip Time Festival Inc.
Date: 2nd weekend of May
Location: That portion of Lake Macatawa, Holland Harbor, east of a north-south line, from shore to shore, at position 086°08′ W. (NAD 83).

Waves of Thunder Offshore Race
Sponsor: Michigan Offshore Powerboat Racing Association
Date: 3rd weekend of June
Location: That portion of Lake Michigan, from the South Pierhead Light (LLNR 18520) south along the shoreline to:

Latitude	*Longitude*
42°19′ N	086°19.3′ W, thence to,
42°19.5′ N	086°19.8′ W, thence to,
42°23.9′ N	086°18.7′ W, thence to,
42°23.9′ N	086°17′ W.

(NAD 83).

West Michigan Offshore Powerboat Challenge
Sponsor: Michigan Offshore Powerboat Racing Association
Date: 1st or 2nd weekend of September
Location: That portion of Lake Michigan from:

Latitude	*Longitude*
43°03.4′ N	086°15.3′ W (Grand Haven South Pierhead Entrance Light, LLNR 18965), thence along the break-water and shore-line to
42°54.8′ N	086°13′ W, thence to,
42°54.8′ N	086°15.7′ W, thence to,
43°03.4′ N	086°15.7′ W, thence to
43°03.4′ N	086°15.3′ W (Grand Haven South Pierhead Entrance Light, LLNR 18965). (NAD 83).

Group Milwaukee, WI

Chicago Air and Water Show
Sponsor: Chicago Park District
Date: 3rd or 4th weekend of August
Location: That portion of Lake Michigan from 41°55′54″ N at the shoreline, then east to a point at 41°55′54″ N 87°37′12″ W, thence southeast to a point at 41°54′ N 87°36′ W, (NAD 83) then a line drawn southwestward to the northeast corner of the Central District Filtration Plant Breakwall, thence due west to shore.

Festa Italiana
Sponsor: The Italian Community Center
Date: 3rd weekend of July
Location: The uncharted lagoon or basin in Milwaukee Harbor north of the mouth of the Milwaukee River and directly adjacent to the Summerfest grounds, enclosed by shore on the west and a ''comma'' shaped man-made rock wall on the east. The construction of the lagoon is such that a small ''basin'' has been created with one entrance located at the northwest end, thus, there is no ''thru traffic''.

Milwaukee Summerfest
Sponsor: Milwaukee World Festival, Inc.
Date: Last week of June through 2nd weekend of July
Location: The uncharted lagoon or basin in Milwaukee Harbor north of the mouth of the Milwaukee River and directly adjacent to the Summerfest grounds, enclosed by shore on the west and a ''comma'' shaped man-made rock wall on the east. The construction of the lagoon is such that a small ''basin'' has been created with one entrance located at the northwest end, thus, there is no ''thru traffic''. Four special buoys will be set by the sponsor to delineate the entrance to the lagoon.

Racine on the Lakefront Airshow
Sponsor: Rotary Club of Racine
Date: 2nd weekend of June
Location: That portion of Racine Harbor, Lake Michigan bounded by the following corner points:

Southeast Corner—42°41.95′ N 87°45.5′ W
Southwest Corner—42°41.95′ N 87°47.2′ W
Northwest Corner—42°45.6′ N 87°46.2′ W
Northeast Corner—42°45.6′ N 87°45.5′ W
(NAD 83).

Dated: August 11, 1995.

G.F. Woolever,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 95–21296 Filed 8–25–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Parts 100 and 165

[CGD 95–071]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between April 1, 1995 and June 31, 1995, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between April 1, 1995 and June 31, 1995, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The complete text of these temporary regulations may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Commander Stephen J. Darmody, Executive Secretary, Marine Safety Council at (202) 267–1477 between the hours of 8 a.m. and 3 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to assure the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation.

Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register**. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. These safety zones, special local regulations and security zones have been exempted from review under E.O. 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period April 1, 1995 and June 31, 1995, unless otherwise indicated.

Stephen J. Darmody,

Acting Commander, U.S. Coast Guard, Executive Secretary, Marine Safety Council.

QUARTERLY REPORT

Docket No.	Location	Type	Effective date
Charleston 95–017	Cooper River, Charleston, SC	Safety Zone	5/6/95
Charleston 95–025	Ashley River, Charleston, SC	Safety Zone	6/11/95
Hampton Roads 95–020	Chesapeake Bay, Hampton Roads, VA	Safety Zone	4/20/95
Houston 95–001	Houston Ship Channel, TX	Safety Zone	1/30/95
Houston 95–001A	San Jacinto River, TX	Safety Zone	1/31/95
Jacksonville 95–011	Patrick AFB, FL	Safety Zone	4/1/95
Jacksonville 95–013	St. Johns River, Jacksonville, FL	Safety Zone	4/9/95
Jacksonville 95–026	Sisters Creek, Jacksonville, FL	Safety Zone	5/30/95
LA/Long Beach 95–001	San Pedro Bay, CA	Safety Zone	2/27/95
LA/Long Beach 95–003	Port of Long Beach, CA	Safety Zone	5/30/95
Miami 95–009	Fort Lauderdale, FL	Safety Zone	5/5/95
Miami 95–021	U.S. Coast Guard Base Miami Beach, FL	Safety Zone	5/13/95
Mobile 95–001	Santa Rosa Sound, Ft Walton Beach, FL	Safety Zone	6/2/95
Mobile 95–002	East Pascagoula River, Pascagoula, MS	Safety Zone	6/15/95
Port Arthur 95–002	Port Arthur, TX	Safety Zone	2/20/95
Port Arthur 95–003	Port Arthur, TX	Safety Zone	2/28/95
Port Arthur 95–004	Port Arthur, TX	Safety Zone	3/3/95
Port Arthur 95–005	Gibbstown, LA	Safety Zone	4/3/95
San Francisco Bay 95–002	Monterey Bay, CA	Safety Zone	4/20/95
San Francisco Bay 95–004	San Francisco Bay, CA	Safety Zone	4/27/95
San Juan 95–022	St. Croix, VI	Safety Zone	5/24/95
St. Louis 95–004	Kaskaskia River, M. 0.0 to M. 22.0	Safety Zone	5/19/95
01–95–053	East River, New York, NY	Security Zone	4/30/95
01–95–054	Hackensack River, NJ	Safety Zone	5/11/95
01–95–059	Hudson River, NY	Safety Zone	5/29/95
01–95–060	Hudson River, NY	Safety Zone	6/17/95
01–95–061	Metedeconk River, Brick, NJ	Safety Zone	6/3/95
01–95–070	Upper New York Bay, NY and NJ	Safety Zone	6/1/95
01–95–071	Long Island Sound, NY	Safety Zone	6/17/95
01–95–080	Upper New York Bay, NY and NJ	Safety Zone	6/7/95
01–95–081	Hempstead Harbor, NY	Safety Zone	6/17/95

QUARTERLY REPORT—Continued

Docket No.	Location	Type	Effective date
01–95–085	Charles River, Boston, MA	Security Zone	6/11/95
01–95–086	Boston Inner Harbor, Boston, MA	Safety Zone	6/30/95
01–95–088	Bridgeport, CT	Safety Zone	6/30/95
02–95–037	Ohio River, M. 309 to M. 311	Special Local	6/3/95
02–95–038	Ohio River, M. 604 to M. 605	Special Local	6/9/95
05–95–027	Norfolk & Portsmouth, VA	Special Local	6/2/95
07–95–006	Key West, FL	Special Local	5/20/95
07–95–007	Miami Beach, FL	Special Local	6/11/95
07–95–014	Fort Pierce, FL	Special Local	4/29/95
07–95–015	Lake Worth, ICW, Mile 1022	Special Local	5/3/95
07–95–024	San Juan, PR	Special Local	5/28/95
07–95–029	Augusta, GA	Special Local	6/9/95
07–95–030	Georgetown, SC	Special Local	6/25/95
07–95–031	St James & Cowpet Bays, St. Thomas, VI	Special Local	6/16/95
07–95–034	Sarasota, FL	Special Local	6/30/95
08–95–009	South Padre Island, TX	Special Local	5/12/95
09–95–011	Detroit River, Fleming Channel, MI	Special Local	6/9/95
11–95–006	San Diego and Mission Bays, CA	Special Local	4/21/95
13–95–026	Coos Bay, North Bend, OR	Safety Zone	6/1/95
13–95–027	Columbia River, Richland, WA	Safety Zone	6/30/95

[FR Doc. 95–21293 Filed 8–25–95; 8:45 am]
BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Honolulu 95–002]

RIN 2115–AA97

Safety Zone; Waimanalo Bay, Oahu, HI

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Waimanalo Bay off Bellows Air Force Station, Oahu, Hawaii. The zone is needed to ensure the safety of the public as well as U.S. Naval and Russian vessels and personnel participating in Exercise Cooperation from the Sea 95. The increased vessel usage of Waimanalo Bay caused by this military exercise increases the potential risks of collision, fire, pollution, harm to the environment, etc., if participating military vessels are not separated from private recreational or commercial vessels. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port.

DATES: This regulation becomes effective at 8 a.m. HST on August 29, 1995 and terminates at 4 p.m. HST on August 29, 1995 and again becomes effective at 8 a.m. HST on August 30, 1995 and terminates at 4 p.m. HST on August 30, 1995.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Michael Sakaio, Port Safety and Security Branch, Marine Safety Office, Honolulu, Hawaii, (808) 522–8260.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The situation requiring this regulation is a joint naval exercise involving U.S. Naval and Russian personnel and vessels conducting amphibious operations off Bellows AFS, Hawaii. This exercise will be widely advertised through the local media which may generate public interest in observing military maneuvers, especially by the Russians. There is some risk of an accident whenever vessels are in close proximity to one another. Having spectator or commercial vessels in the middle of an amphibious operation increases the risk of destruction, loss, or injury to vessels, personnel participating in this exercise, spectators, and to the environment. These risks can be minimized if not eliminated by keeping military and non-military vessels separate from one another during the amphibious exercise. The area of the safety zone encompasses the navigable waters bounded by these coordinates: 21°22.8′ N, 157°40.4′ W; 21°22.8′ N, 157°42.3′ W; 21°20.8′ N, 157°42.2′ W; 21°20.8′ N, 157°40.4′ W; (Datum: WGS 84).

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent destruction, loss, or injury from accidents or other causes of a similar nature.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not be reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary 165.T14–002 is added to read as follows:

§ 165.T14–002 Safety Zone; Waimanalo Bay, Oahu, Hawaii.

(a) *Location.* The following area is a Safety Zone: 21°22.8′ N, 157°40.4′ W; 21°22.8′ N, 157°42.3′ W; 21°20.8′ N, 157°42.2′ W; 21°20.8′ N, 157°40.4′ W; (Datum: WGS 84).

(b) *Effective dates.* This section becomes effective at 8 a.m. HST on August 29, 1995 and terminates at 4 p.m. HST on August 29, 1995, and again becomes effective at 8 a.m. HST on August 30, 1995 and terminates at 4 p.m. HST on August 30, 1995.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port.

Dated: August 11, 1995.

Samuel E. Burton,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 95–21295 Filed 8–25–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Honolulu 95–003]

RIN 2115–AA97

Safety Zone; Barbers Point NAS, Oahu, HI

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone offshore of Barbers Point Naval Air Station, Oahu, Hawaii. The zone is rectangular in shape and is enclosed within these coordinates: 21°18′ N, 158°4.15′ W; 21°17′ N, 158°4.15′ W; 21°17′ N, 158°3.06′ W; 21°18.06′ N, 158°3.06′ W; (Datum: WGS 84). This zone is needed to protect vessels, mariners, and observers from possible safety hazards associated with the U.S. Navy Blue Angels Air Show. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port.

DATES: This regulation becomes effective at 1 p.m. on September 1, 1995, and terminates at 4 p.m. on September 1, 1995, and again becomes effective at 1 p.m. on September 3, 1995, and terminates at 4 p.m. on September 3, 1995.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Junior Grade Michael Sakaio, Port Safety and Security Branch, Marine Safety Office, Honolulu, Hawaii, (808) 522–8260.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The situation requiring this regulation is the U.S. Navy Blue Angels Aerial Demonstration. Aircraft will perform low level, high speed aerobatics to demonstrate the proficiency of the aircraft and the USN pilots. This regulation is intended to minimize the risk to vessels, mariners, and observers from these aircraft. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest since immediate action is needed to protect vessels, mariners, and observers from possible hazards in the vicinity of the U.S. Navy Blue Angels demonstration area.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

PART 165—[AMENDED]

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T14–003 is added to read as follows:

§ 165.T14–003 Safety Zone; Barbers Point NAS, Oahu, Hawaii.

(a) *Location.* The following area is a Safety Zone: 21°18′ N, 158°4.15′ W; 21°17′ N, 158°4.15′ W; 21°17′ N, 158°3.06′ W; 21°18.06′ N, 158°3.06′ W; (Datum: WGS 84).

(b) *Effective dates.* This section becomes effective at 1 p.m. on September 1, 1995 and terminates at 4 p.m. on September 1, 1995 and again becomes effective at 1 p.m. on September 3, 1995 and terminates at 4 p.m. on September 3, 1995.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port.

Dated: August 11, 1995.

Samuel E. Burton,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 95–21294 Filed 8–25–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC24–1–6793a; FRL–5271–1]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia—Recodification of the District's Air Pollution Control Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the District of Columbia. This revision consists of a revised format for the District's air pollution control regulations. Except as otherwise indicated, the changes are administrative in nature, and do not substantively revise the current SIP. The intended effect of this action is to ensure that the District of Columbia's current regulatory numbering format and the District of Columbia SIP numbering format are consistent with each other. This action is being taken in accordance with section 110 of the Clean Air Act.

DATES: This final rule is effective October 27, 1995 unless notice is received on or before September 27, 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, Air, Radiation, and Toxics Division, 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 District of Columbia Department of Consumer and Regulatory Affairs, 2100 Martin Luther King Ave, S.E., Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 597–1325.

SUPPLEMENTARY INFORMATION: On June 21, 1985, the District of Columbia submitted to EPA Region III both a revised format and numerous amendments to its air pollution control regulations, and requested that these changes be reviewed and processed as revisions of the District's State Implementation Plan (SIP). The District's regulations have undergone many changes, both substantive and nonsubstantive. Many of the nonsubstantive changes were made to the regulations to improve their clarity and simplicity. The new format of the regulations organizes the emission standards and other provisions into eight chapters and four appendices. This rulemaking takes action on the non-substantive format changes to the District's SIP submitted in June 1985. The substantive revisions have been or will be considered in separate rulemaking actions.

While the revised regulatory format include provisions governing odor and certain non-criteria pollutants, EPA has not reviewed the changes made to these rules since they are not part of the District's SIP.

The District certified that public hearings pertaining to these revisions were held on May 9, 1984 in Washington, DC as required by 40 CFR Section 51.102. As of August 28, 1995, these revisions remain current District law.

Summary of SIP Revision

The regulatory content of the current District of Columbia SIP consists of Sections 8–2:701 through 8–2:731 of the District's Health Regulations. The District restructured its regulations as part of the District of Columbia Air Pollution Control Act of 1984 (D.C. Law 5–165), effective March 15, 1985. This act created Title 20 (District of Columbia Air Quality Control Regulations) of the District of Columbia Municipal Regulations [cited as 20 DCMR], which replaced Title 8 (Health Regulations) Section 2 of the District of Columbia Air Pollution Control Act originally enacted July 30, 1968 and Regulation 72–12 of the District of Columbia Regulations, originally enacted on July 7, 1972.

The revised 20 DCMR is organized as follows:

Chapter 1—General
Chapter 2—General and Non-attainment Area Permits
Chapter 3 (Reserved)
Chapter 4—Ambient Monitoring and Emergency Procedures
Chapter 5—Source Monitoring and Testing
Chapter 6—Particulates
Chapter 7—Volatile Organic compounds
Chapter 8—Asbestos, Sulfur and Nitrogen Oxides

Appendices

Appendix No. 1 (Emission Limits for Nitrogen Oxide)
Appendix No. 2 [Table of Allowable Particulate Emissions from Process Sources]
Appendix No. 3 [Allowable VOC Emissions under Section 710]

The following list cross-references the citations found in 20 DCMR with the current SIP provisions.

SIP citation (regulation 8–2:XXX)		20 DCMR citation	
701	Purpose of Regulation	100	Purpose, Scope and Construction.
729	Construction of Regulation.		
722	Inspection	101	Inspection.
723	Order for Compliance	102	Order for Compliance.
725	Hearings	104	Hearings.
726	Penalty	105	Penalties.
727	Public Disclosure of Records and Information: Confidentiality	106	Confidentiality of Reports.
716	Control Devices and Practices	107	Control Devices or Practices.
702	Definitions	199	Definitions and Abbreviations.*
703	Abbreviations.		
728	Air Pollution Monitoring	400	Air Pollution Reporting Index.
719	Emergencies	401	Emergency Procedures.
717	Records, Reports and Monitoring Devices	500	Records and Reports.
		501	Monitoring Devices.
718	Sampling, Tests and Measurements	502	Sampling, Tests and Measurements.**
708	Fuel Burning Particulate Emissions	600	Fuel Burning Particulate Emissions.
		601	Rotary Cup Burners.
709	Incinerators	602	Incinerators.
710	Process Emissions	603	Particulate Process Emissions.

SIP citation (regulation 8–2:XXX)	20 DCMR citation
	803 Sulfur Process Emissions.
711 Open Burning	604 Open Burning.
712 Control of Fugitive Dust	605 Control of Fugitive Dust.
713 Visible Emissions	606 Visible Emissions.
704 Use of Certain Fuel Oils Forbidden	801 Sulfur Content of Fuel Oils.
705 Use of Certain Coal Forbidden	802 Sulfur Content of Coal.
706 Nitrogen Oxide Emissions	804 Nitrogen Oxide Emissions.

*Codification scheme to be approved, but not all definitions.
**The regulations in Section 502 reference the Part 60 (NSPS) requirements in effect as of July 1, 1982.

As part of the transition between the current SIP regulatory scheme and the revised scheme, the District of Columbia has submitted the following generic changes found throughout 20 DCMR:

Current SIP wording	New SIP wording
1. "Regulation"	"Subtitle".
2. "Commissioner"	"Mayor".
3. "He/Him"	"He or She/His or Her/Mayor".
4. "Any"	"Each",
5. "Such"	"The".
6. "Shall"	"Should".

As another result of this recodification, these are several SIP provisions which have no equivalent in the 20 DCMR provisions. Similarly, 20 DCMR contains new provisions, both substantive and administrative, not found currently in the District's SIP. These provisions are summarized below:

Section 8–2:721 (Complaints and Investigations)
Section 8–2:730 (Independence of Sections)
Section 8–2:731 (Effective Date)

EPA's evaluation in this action is limited to the regulation restructuring format and all associated administrative changes. As a result of the Clean Air Act Amendments of 1990, the District of Columbia was required to revise and submit to EPA many of the provisions found in Chapters 2 and 7 of 20 DCMR. The District has also submitted various revised definitions and terms found throughout 20 DCMR. The changes to Sections 2 and 7 resulting from the recodification are revised below:

SIP citation (regulation 8–2:XXX)	20 DCMR citation
	(Chapter 2)
720a Permit to Operate	200.1 Permit requirements.
720b	200.2,2a,3
720c	200.6–200.10, 200.12
720d	200.4
720f	200.5
720e General Requirement for the Issuance of Permit	201 General Requirements for Permit Issuance.
720g Modification, Revocation and Termination of Permits	202 Modification, Revocation and Termination of Permits.
720e6 Permits in Nonattainment Areas	204 Permits in Nonattainment Areas.
720h Permits for Fuel-Burning Equipment	200.11
	(Chapter 7)
707f Organic Solvents	700 Organic Solvents.
707a Storage of Petroleum Products	701 Storage of Petroleum Products.
	702 Control of VOC Leaks from Petroleum Refinery Equipment.
707b Gasoline Loading	703 Terminal Vapor Recovery—Gasoline or VOC.
707b Trailer and Railroad Tank Car.	
707c Gasoline Transfer Vapor Control	704 Stage I Vapor Recovery.
707d Control of Evaporative Losses From the Filling of Vehicular Tanks	705 Stage II Vapor Recovery.
707e Dry Cleaners	706 Petroleum Dry Cleaners.
	707 Perchlorethylene Dry Cleaning.
707j Solvent Cleaning Degreasing	708 Solvent Cleaning Degreasing.
707k Asphalt Operations	709 Asphalt Operations.
707g Pumps and Compressors	711 Pumps and Compressors.
707h Waste Gas Disposal from Ethylene Producing Plant	712 Waste Gas Disposal from Ethylene Producing Plant.
707i Waste Gas Disposal from Vapor Blow Down System	713 Waste Gas Disposal from Vapor Blow Down System.

On March 24, 1995 (60 FR 15483), EPA disapproved the revised substantive provisions to Chapter 2, Sections 200, 201, 202, 204 and 299 of 20 DCMR as a revision to the District's SIP. Similarly, EPA will review the revised substantive provisions to Chapter 7 in a separate rulemaking action. It should be noted that Section 710 (Engraving and Plate Printing) was approved by EPA as a revision to the District of Columbia SIP on August 4, 1992 (57 FR 34251) and codified at 40 CFR 52.470(c)(27) and 52.472(d). As of the date of this action, the District has not formally submitted any of the provisions found in Section 203 (Good Engineering Practice Stack Height) as a revision of the District's SIP. In addition, as part of the June 21, 1985 submittal, the District of Columbia also revised the provisions of Section 103 (SIP Section 8–2:724) governing procedures for granting variances. EPA

will review these revised provisions in a separate rulemaking action.

Definitions/Abbreviations Added in 20 DCMR

The District's recodification SIP submittal affects many definitions of terms. For the reasons stated above, EPA is not reviewing in this action, any term found exclusively in Chapter 2 and Chapter 7 (other than Section 710). The terms being reviewed as part of this recodification action are listed below:

Affected facility, Building, structure, facility, or installation, Cartridge filter, Component, Containers and conveyers of solvent, Crude oil, Cylinder wipe, Emission unit, Federally enforceable, Flexography, Fugitive emission, Gas services, Gas services for pipeline/valves and pressure relief valves, Gravure, Heatset, Hydrocarbon, Ink, Inking cylinder, Innovative control technology, Intaglio, Leaking component, Lease custody transfer, Letterpress, Letterset, Liquid service, Necessary preconstruction, Net emission increase, Offset printing process, Offset lithography, Paper wipe, Perceptible, leak, Petroleum solvent, Plate, Printing, Printing operation, Printing Unit, Refinery operator, Refinery unit, Routing, Secondary emissions, Substrate, Vacuum still, Valves not externally regulated, Water-based solvent, Wiping solution.

Abbreviations—CFR, EPA, GEP, ppmv.

SIP Definitions/Abbreviations Revised by the Recodification

Air pollution, Distillate oil, Dry cleaning, Existing source, Fugitive dust, Incinerator, Loading facilities, Person, Start-up, Stationary source, Vapor tight, Wipe cleaning.

SIP Definitions/Abbreviations Deleted in the Recodification

Act, Air quality standard of the District of Columbia, Dry cleaning operation, Freeboard ratio, Mayor, Vehicular fuel tank.

Abbreviations—(Degree), VOC, ''%''.

SIP Definitions/Abbreviations Unchanged by the Recodification (Except for the Numbering Format)

Air Pollutant, Control Device, Conveyorized Degreaser, Cutback Asphalt, Cold Cleaner, District, Emission, Episode Stage, Fossil Fuel, Fossil-Fuel-Fired Steam-Generating Unit, Freeboard, Fuel Burning Equipment, Gasoline, Malfunction, Multiple Chamber Incinerator, Opacity, Open-top Vapor Degreaser, Organic Solvents, Particulate Matter, Photochemically Reactive Solvent, Process, Process Weight, Process Rate Per Hour, Ringelmann Smoke Chart, Smoke, Solid Waste, Standard Conditions, Submerged Fill Pipe, Volatile Organic Compounds.

Abbreviations—B.T.U., cal., CO, COHs, cfm, g., Hi-Vol., hr., lb., max., NO_2, No., ppm, psia, SO_2, $\mu g/m^3$, U.L.

In addition, 20 DCMR adds Sections X99 of Chapters 2 and 4 through 8, which cross-references the definitions and abbreviations listed in Section 199. The entire list of terms, including those not being reviewed in this action, are enumerated in the accompanying technical support document.

EPA will not review Section 205 (New Source Performance Standards) since it merely cross-references 40 CFR part 60. Similarly, EPA will not review the following 20 DCMR provisions since they govern provisions not included in the current District of Columbia SIP:

Sections 502.11, 502.12—Test Methods for Odors
Section 502.14—Test methods for stationary sources of hazardous pollutants
Section 800—Asbestos
Chapter 9—Motor Vehicular Pollutants, Lead, Odors and Nuisance Pollutants (all provisions)
Appendix 4—April 5, 1984 **Federal Register** notice announcing revisions to rules and regulations codified in 40 CFR Part 61

EPA Evaluation

In order to evaluate the approvability as a SIP revision of District of Columbia's formal submittal, the critical factors to be considered are (1) Whether the revised emission limitation demonstrates attainment and maintenance of the National Ambient Air Quality Standards (NAAQS); (2) whether issues of enforceability arise; and (3) whether all of the applicable requirements (both procedural and substantive) of 40 CFR Part 51 are met.

A. Impacts on Attainment/Maintenance on the NAAQS

The majority of the revisions to the District of Columbia's air pollution control regulations resulting from the recodification have had no effect on the attainment and maintenance of the national ambient air quality standards (NAAQS). The wording of many provisions has been revised to conform with the format of 20 DCMR, but the emissions standards that are currently in the Federally-enforceable District of Columbia SIP remain in the provisions of 20 DCMR. Similarly, the wording of many defined terms and abbreviations currently in the SIP have been revised (using one or more of the six format changes listed above) to reflect the change in the format from Title 8, Section 2 (the current SIP format) to 20 DCMR. The substantive meaning of the defined term remains unchanged.

However, since November 15, 1990, the District of Columbia has been required to revise the provisions in Chapters 2 (General Permit Requirements) and 7 (Volatile Organic Compounds) in order to satisfy the revised requirements of the Clean Air Act. Many definitions in Section 199 associated with the provisions of Chapters 2 and 7 have also been revised. Because these revisions supersede those which were submitted in June 1985, EPA will take action on these provisions in separate rulemaking actions.

B. Enforceability Issues

With the exceptions noted below, there are no enforceability issues. The provisions that are revised solely to conform with the format of 20 DCMR are clear in their wording and intent. First, Section 502.4(d) is designed to replace SIP regulation 8–2:718(a)(3)(D). However, the expression ''fuel and/or raw materials'' found in the current SIP provision has been inadvetently replaced with ''fuel raw materials'' in Section 502.4(d). The District of Columbia maintains, and EPA agrees, that this wording discrepancy represents a typographical error, and that EPA will continue to consider ''fuel and/or raw materials'' as the SIP-approved language. In addition, in 20 DCMR Section 401, subections 401.5 through 401.8 are used twice to cite distinctive provisions of this revised section. Again, the District maintains, and EPA agrees, that this format discrepancy represents a typographical error, and thus does not impose an enforcement concern.

Other subsections of Sections 502 and 600 reference the test methods and requirements of 40 CFR Part 60 (New Source Performance Standards) as it existed on July 1, 1982. This citation in Section 502 was meant to update the referenced test methods that are listed in the old SIP regulation 8–2:718. Inasmuch as 40 CFR Part 60 has been revised numerous times since July 1, 1982, and inasmuch as the current version of 40 CFR Part 60, being a federal regulation, is already federally enforceable, EPA will apply the most current provisions of 40 CFR Part 60 where any conflict exists with the citations in Section 502.

C. Conformity With the Clean Air Act, as Amended, and the Applicable Requirements of 40 CFR Part 51

The provisions of 20 DCMR being considered in this rulemaking action do not represent substantive changes to the current federally-enforceable provisions which previously had met all applicable requirements of 40 CFR part 51.

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 published elsewhere in this **Federal Register**, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 27, 1995 unless, on or before September 27, 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 October 27, 1995.

Final Action

EPA is approving the revised regulatory format for the District of Columbia's air pollution control regulations is approvable as a revision to the District of Columbia SIP. Therefore, this format will be incorporated by reference into the District's SIP, and codified at 40 C.F.R. Section 52.470(c)(34).

EPA has not reviewed the substance of certain regulations at this time. These rules, which pertain to substantive revisions of and definitions associated with the District of Columbia's good engineering practice (GEP) stack height, volatile organic compounds (VOC), and new source review provisions will be acted upon in separate rulemaking actions. The EPA is now only approving the numbering system and associated administrative changes submitted by the State. The EPA's approval of the renumbering system, at this time, does not imply any position with respect to the approvability of the substantive rule changes to the above-listed changes. To the extent EPA has issued any SIP calls to the State with respect to the adequacy of any of the rules subject to this recodification, EPA will continue to require the State to correct any such rule deficiencies despite EPA's approval of this recodification.

The Agency has reviewed this request for revision of the Federally-approved State implementation plan 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 irrespective of the fact that the submittal preceded the date of enactment.

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 Clean Air 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, 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 Clean Air Act forbids EPA to base its actions concerning SIPs 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 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 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 proposed/promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 27, 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 to approve the revisions associated with the recodified District of Columbia SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: July 18, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

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 J—District of Columbia

2. Section 52.470 is amended by adding paragraph (c)(34) to read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) * * *

(34) Revisions to Title 20 the District of Columbia Municipal Regulations (DCMR) on June 21, 1985 by the District of Columbia:

(i) Incorporation by reference.

(A) Letter of June 21, 1985 from the Mayor of the District of Columbia transmitting Act 5–165, representing the air pollution cotrol regulations codified in 20 DCMR.

(B) The revised provisions of 20 DCMR, effective March 15, 1985, as described below:

(*1*) Chapter 1—General.

Section 100 (Purpose, Scope, and Construction), subsections 100.1 through 100.5
Section 101 (Inspection), subsection 101.1
Section 102 (Orders for Compliance), subsections 102.1 through 102.3
Section 104 (Hearings), subsections 104.1 through 104.5
Section 105 (Penalty), subsections 105.1 through 105.4
Section 106 (Confidentiality of Reports), subsections 106.1 and 106.2
Section 107 (Control Devices or Practices), subsections 107.1 through 107.4
Section 199 The following definitions and abbreviations:

Definitions (Section 199.1)—*Added*: Affected facility, Building, structure, facility, or installation, Cartridge filter, Component, Containers and conveyers of solvent, Crude oil, Cylinder wipe, Emission unit, Federally enforceable, Flexography, Fugitive emission, Gas services, Gas services for pipeline/valves and pressure relief valves, Gravure, Heatset, Hydrocarbon, Ink, Inking cylinder, Innovative control technology, Intaglio, Leaking component, Lease custody transfer, Letterpress, Letterset, Liquid service, Necessary preconstruction, Net emission increase, Offset printing process, Offset lithography, Paper wipe, Perceptible, leak, Petroleum solvent, Plate, Printing, Printing operation, Printing Unit, Refinery operator, Refinery unit, Routing, Secondary emissions, Substrate, Vacuum still, Valves not externally regulated, Water-based solvent, Wiping solution. *Revised*: Air pollution, Distillate oil, Dry cleaning, Existing source, Fugitive dust, Incinerator, Loading facilities, Person, Start-up, Stationary source, Vapor tight, Wipe cleaning.

Unchanged from Section 8–2:702: Air Pollutant, Control Device, Conveyorized Degreaser, Cutback Asphalt, Cold Cleaner, District, Emission, Episode Stage, Fossil Fuel, Fossil-Fuel-Fired Steam-Generating Unit, Freeboard, Fuel Burning Equipment, Gasoline, Malfunction, Multiple Chamber Incinerator, Opacity, Open-top Vapor Degreaser, Organic Solvents, Particulate Matter, Photochemically Reactive Solvent, Process, Process Weight, Process Rate Per Hour, Ringelmann Smoke Chart, Smoke, Solid Waste, Standard Conditions, Submerged Fill Pipe, Volatile Organic Compounds.

Abbreviations (Section 199.2)—*Added:* CFR, EPA, ppmv *Unchanged from Section 8–2:702:* B.T.U., cal., CO, COHs, cfm, g., Hi-Vol., hr., lb., max., NO_2, No., ppm, psia, SO_2, $\mu g/m^3$, U.L.

Note: Section 199 of Chapter 1 lists all of the applicable definitions and abbreviations, while Sections X99.1 and X99.2 of each chapter contain a cross-reference to definitions listed in Section 199.1 and abbreviations listed in Section 199.2.

(*2*) Chapter 4—Ambient Monitoring and Emergency Procedures.

Section 400 (Air Pollution Reporting Index), subsection 400.1
Section 401 (Emergency Procedures), subsections 401.1 through 401.4, 401.2 through 401.8, 401.7 (duplicate) and 401.8 (duplicate)
Section 499 (Definitions and Abbreviations), subsections 499.1 and 499.2

(*3*) Chapter 5—Source Monitoring and Testing.

Section 500 (Source Monitoring and Testing), subsections 500.1 through 500.3
Section 501 (Monitoring Devices), subsections 501.1 through 501.3
Section 502 (Sampling, Tests, and Measurements), subsections 502.1 through 502.15 (except for subsections 502.11, 502.12, and 502.14)
Section 599 (Definitions and Abbreviations), subsections 599.1 and 599.2

(*4*) Chapter 6—Particulates.

Section 600 (Fuel-Burning Particulate Emission), subsections 600.1 through 600.7
Section 601 (Rotary Cup Burners), subsections 601.1 and 601.2
Section 602 (Incinerators), subsections 602.1 through 602.6
Section 603 (Particulate Process Emissions), subsections 603.1 through 603.3
Section 604 (Open Burning), subsections 604.1 and 604.2
Section 605 (Control of Fugitive Dust), subsections 605.1 through 605.4
Section 606 (Visible Emissions), subsections 606.1 through 606.9
Section 699 (Definitions and Abbreviations), subsections 699.1 and 699.2

(*5*) Chapter 8—Asbestos, Sulfur and Nitrogen Oxides.

Section 801 (Sulfur Content of Fuel Oils), subsection 801.1
Section 802 (Sulfur Content of Coal), subsections 802.1 and 802.2
Section 803 (Sulfur Process Emissions), subsections 803.1 through 803.4
Section 804 (Nitrogen Oxide Emissions), subsection 804.1
Section 899 (Definitions and Abbreviations), subsections 899.1 and 899.2

(*6*) Appendices.

Appendix No. 1 (Emission Limits for Nitrogen Oxide)
Appendix No. 2 [Table of Allowable Particulate Emissions from Process Sources]
Appendix No. 3 [Allowable VOC Emissions under Section 710]

(*7*) Deletion of the following SIP provisions:

Section 8–2:721 (Complaints and Investigations)
Section 8–2:730 (Independence of Sections)
Section 8–2:731 (Effective Date)

The following definitions and abbreviations:

Definitions: Act, Air quality standard of the District of Columbia, Dry cleaning operation, Freeboard ratio, Mayor, Vehicular fuel tank.

Abbreviations: (Degree), VOC, ''%''.

(ii) Additional material.

(A) Remainder of June 21, 1985 District of Columbia submittal pertaining to the provisions listed above.

[FR Doc. 95–20985 Filed 8–25–95; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7154

[CA–930–1430–01; CACA 33632]

Withdrawal of National Forest System Land To Protect the Harlow Cabin Site, Heritage Resources Site No. RR–133; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 20 acres of National Forest System land from mining for a period of 50 years to protect the historic Harlow Cabin Site. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: August 28, 1995.

FOR FURTHER INFORMATION CONTACT: Marcia Sieckman, BLM California State Office (CA–931), 2800 Cottage Way, Sacramento, CA 95825, 916–979–2858.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Forest Service's Harlow Cabin Site:

Mount Diablo Meridian

Rogue River National Forest

T. 48 N., R. 11 W.,
sec. 14, Tract 49.

The area described contains 20 acres in Siskiyou County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal

Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: August 17, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–21220 Filed 8–25–95; 8:45 am]

BILLING CODE 4310–40–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 514 and 583

[Docket No. P2–95]

Household Goods Forwarders Association of America, Inc., Petition for Exemption

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (''Commission'' or ''FMC'') is amending its regulations to exempt non-vessel-operating common carriers by water from the tariff filing requirement of Part 514 and the bonding requirement of Part 583, to the extent that they transport used household goods and personal effects of federal civilian employees pursuant to a solicitation issued and administered by the General Services Administration. These carriers are already subject to a GSA requirement that they post a performance bond in excess of the Commission's bonding requirement, and the rates for such services will be filed with GSA. The exemption will remove duplicative requirements and result in lower costs.

EFFECTIVE DATE: Effective August 28, 1995.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (202) 523–5740;

and

Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION: The Household Goods Forwarders Association of America, Inc. (''HHGFAA'' or ''Petitioner'') has filed a Petition for Exemption (''Petition'') pursuant to section 16 of the Shipping Act of 1984 (''1984 Act''), 46 U.S.C. app. 1715, and section 35 of the Shipping Act, 1916 (''1916 Act''), 46 U.S.C. app. 833a, and Rule 69 of the Commission's Rules of Practice and Procedure, 46 CFR 502.69. The Petition seeks an exemption for non-vessel-operating common carriers (''NVOCCs'') from the tariff filing requirement of 46 CFR Part 514 and the bonding requirement of 46 CFR Part 583, to the extent they engage in the transportation of used household goods and personal effects of employees of federal civilian executive agencies in the domestic and foreign commerce of the United States, pursuant to a solicitation issued and administered by the General Services Administration (''GSA'').

Notice of filing of the Petition was published in the **Federal Register**, 60 FR 20494 (April 26, 1995), and interested persons were invited to submit their views. Comments in support of the Petition were submitted by North American Van Lines, Inc., the American Movers Conference (''AMC''), the United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference [1] (''Conference''), and Mr. William P. Hobson, Manager of the Centralized Household Goods Traffic Management Program of GSA. No comments were filed in opposition to the Petition.

The Petition

Petitioner points out that the Commission has previously exempted NVOCCs engaged in the transportation of *military* used household goods and personal effects from the NVOCC tariff filing and bonding requirements, citing 46 CFR 550.1(a)(6), 580.1(c)(7), and 583.3(c). It contends that the same reasons for granting that exemption warrant the tariff and bonding exemption requested herein for used household goods and personal effects of *federal civilian employees* pursuant to a GSA solicitation.

HHGFAA advises that GSA issued an International Tender of Service (''GSA Tender'') on January 2, 1995, soliciting bids from carriers for the transportation of used household goods and personal effects of federal civilian employees between points in the United States and foreign points. This procurement will commence on October 1, 1995. HHGFAA members intend to participate in this solicitation.

The GSA Tender sets forth the terms and conditions for participation, including the services to be provided and how rates are to be quoted, and requires each participant to file a performance bond with GSA. GSA ensures that each carrier has the requisite experience, financial responsibility, a quality control program, and the ability to perform the service. Each participant must provide a performance bond in the minimum amount of $75,000 or 2.5 percent of the carrier's gross annual revenue derived from the GSA international program for the previous year, whichever is greater, and also must maintain cargo liability insurance in an aggregate minimum of $150,000.

GSA will establish baseline rates for certain traffic channels. Each qualified NVOCC can then file door-to-door through rates which are a percentage of the GSA baseline rates. The shipments will move on a through Government Bill of Lading (''GBL'').

HHGFAA contends that filing tariffs with the FMC covering these GSA international shipments would duplicate the rate-filing requirements of the GSA Tender and would result in unnecessary additional costs. It further submits that the filing of through rates as a percentage of a GSA baseline cannot presently be accomplished under the Commission's tariff rules or ATFI.

HHGFAA further argues that NVOCC bonds would duplicate the GSA bonding requirement, and result in additional, unnecessary costs. Moreover, it claims that the reasons which caused the Commission to exempt used military household goods from tariff filing apply in this case. HHGFAA likewise maintains that the reasons for exempting NVOCCs engaged in the transportation of used household goods exclusively for the Department of Defense from filing bonds warrant a similar exemption here. In this regard, it points out that GSA's bonding requirement is significantly greater than the Commission's.

Comments on Petition

The Conference anticipates substantial GSA program oversight, and therefore has no objection to elimination of the bonding requirement. However, it also argues that an exemption from tariff filing should be conditioned on making such rates publicly available through GSA or another organization.

AMC believes that GSA's Tender would be greatly enhanced by an FMC exemption from tariff filing and bonding. In light of the GSA's stringent standards, AMC submits that there is no need for a separate bonding requirement or tariff filing requirement. AMC further notes that military household goods have been exempt from FMC tariff filing for several years and that this exemption has had no detrimental effects. It believes that the instant GSA rate

[1] Farrell Lines, Inc. and Lykes Bros. Steamship Co. disassociated themselves from these comments.

solicitation will operate in a similar manner.

GSA's Mr. Hobson notes that the GSA Tender covers service to be provided under Government bills of lading at through rates solicited by GSA on a competitive basis. In order to ensure a competitive environment, GSA has established uniform rules and charges governing accessorial charges. In addition, GSA will establish baseline rates, and qualified carriers will submit bids below, above, or at the baseline rates for the traffic channels they wish to serve. The carriers' through rates will be effective for twelve months and available for use by all federal executive agencies. Each carrier must certify that its rates were established independently. Mr. Hobson claims that tariff filing with the Commission would not benefit GSA since all bid rates will be filed with GSA and maintained in its computer. He likewise maintains that an FMC bond is of no benefit since the GSA bond is higher. He argues that the tariff exemption will reduce carriers' costs by relieving them of the expense of filing rates with the FMC, as will the bonding exemption. This, in turn, allegedly should allow carriers to submit lower rates to GSA.

Discussion

Section 16 of the 1984 Act states in pertinent part:

> The Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this Act or any specified activity of those persons from any requirement of this Act if it finds that the exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce.

The exemption sought here meets the standards of section 16. It will provide relief from the tariff filing and bonding requirements for NVOCCs who transport federal civilian household goods pursuant to a GSA monitored program and is virtually identical to an exemption that already exists for the transportation of military household goods.

The exemption should not substantially impair effective regulation by the Commission. Although the rates under which this transportation will be provided will not be filed with the Commission, they will be available through GSA. Moreover, these rates only apply to a single shipper, GSA, or the federal civilian agency participating in its program. Accordingly, there should be little or no cause for concern about potential discrimination. The competitive nature of GSA's program will remain unchanged in that carriers seeking to participate in certain trade lanes will have to competitively bid for the cargo. Lastly, the exemption should be beneficial to commerce. It will remove certain duplicative activities which serve no useful purpose, and should reduce the overall costs for all involved in the GSA program.

Bonds and other forms of surety issued after the effective date of this exemption will contain express language indicating that they do not apply to civilian household goods carried under the GSA program. If, after this date, NVOCCs desire to have this exemption apply to their existing bonds, they can request that the bonding companies reissue their bonds with the appropriate language included.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions. The exemption will permit NVOCCs who are engaged in the GSA civilian household goods program to reduce their costs by removing duplicative or unnecessary requirements.

This final rule does not contain any collections of information as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

List of Subjects

46 CFR Part 514

Freight, Harbors, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 583

Freight, Maritime carriers, Reporting and recordkeeping requirements, Surety bonds.

Therefore, pursuant to 5 U.S.C. 553, section 43 of the Shipping Act, 1916, 46 U.S.C. app. 841a, and section 17 of the Shipping Act of 1984, 46 U.S.C. app. 1716, Parts 514 and 583 of Title 46, Code of Federal Regulations, are amended as follows:

PART 514—[AMENDED]

1. The authority citation for Part 514 continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

2. Section 514.3 is amended by adding a new paragraph (b)(5) reading as follows:

§ 514.3 Exemptions and exclusions.

* * * * *

(b) * * *

(5) *Used household goods—General Services Administration.* Transportation of used household goods and personal effects by non-vessel-operating common carriers shipped by federal civilian executive agencies under the International Household Goods Program administered by the General Services Administration is exempt from the filing requirements of the 1916 and 1984 Acts and the rules of this part.

* * * * *

PART 583—[AMENDED]

3. The authority citation for Part 583 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. App. 1702, 1707, 1709, 1710–1712, 1716, and 1721.

4. Paragraph (c) of § 583.3 is revised to read as follows:

§ 583.3 Proof of financial responsibility, when required.

* * * * *

(c) Any person which exclusively transports used household goods and personal effects for the account of the Department of Defense, or for the account of the federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration, or both, is not subject to the requirements of this part, but may be subject to other requirements, such as alternative surety bonding, imposed by the Department of Defense or the General Services Administration.

5. Appendix A to Part 583 is amended by revising the last sentence in the fourth paragraph to read as follows:

Appendix A to part 583—Non-Vessel-Operating Common Carrier (NVOCC) Band Form

* * * * *

* * * However, the bond shall not apply to shipments of used household goods and personal effects for the account of the Department of Defense or the account of federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration.

* * * * *

6. Appendix D to Part 583 (Form FMC–69) is amended by revising the last sentence in the fourth paragraph to read as follows:

Appendix D to part 583—Non-Vessel-Operating Common Carrier (NVOCC) Group Bank Form [FMC–69]

* * * * *

* * * However, the bond shall not apply to shipments of used household goods and personal effects for the account of the Department of Defense or the account of federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–20949 Filed 8–25–95; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 310

RIN 2133–AB22

[Docket No. R–161]

Merchant Marine Training

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is amending its regulations for the admission and training of midshipman at the United States Merchant Marine Academy to conform them to changes in the law. The amendments are with respect to the nomination and admission to the Academy of persons from American Samoa and Panama and the authority of the Secretary of Transportation to recover from graduates of the Academy costs of their education if they fail to fulfill certain conditions of their service obligations.

EFFECTIVE DATE: August 28, 1995.

FOR FURTHER INFORMATION CONTACT: Crawford Ellerbe, Academy Program Analyst, Office of Maritime Labor and Training, Maritime Administration, Department of Transportation, 400 Seventh Street SW., Room 7302, Washington, DC 20590, Telephone: (202) 366–2643.

SUPPLEMENTARY INFORMATION: This rulemaking amends MARAD regulations applicable to the U.S. Merchant Marine Academy (USMMA) to implement provisions of Pub.L. 101–595, as follows: (1) It recognizes that there is now a Delegate to the House of Representatives from American Samoa who may appoint persons to the Academy. Previously, the Governor of American Samoa had been authorized to appoint persons to the Academy until a delegate to the House of Representatives from American Samoa took office. (2) It reflects the added authority of the Secretary of Transportation (Secretary) to exercise discretion to recover from USMMA graduates the Federal Government's costs for their education if they fail to fulfill certain conditions of their service obligation. Previously, the only consequence of a breach of contract by USMMA graduates was that they be ordered to active military service. (3) It also recognizes the authority of the Secretary of Transportation to allow an unlimited number of Panamanians to be admitted to the Academy on a reimbursable basis. Previously, the Secretary had been limited to allowing six appointments annually, on a reimbursable basis.

Rulemaking Analysis and Notices

Executive Order 12866 (Federal Planning and Review) and DOT Regulatory Policies and Procedures.

This rulemaking is not considered to be an economically significant regulatory action under section 3(f) of E.O. 12866, and it is not considered to be a significant rule under the Department's Regulatory Policies and Procedures. (44 FR 11034, February 26, 1979). Accordingly, it was not reviewed by the Office of Management and Budget.

A full regulatory evaluation is not required since this rule provides for regulatory costs that are allowed by statute, within the discretion of the Secretary of Transportation.

MARAD has determined that this rulemaking presents no substantive issue which it could reasonably expect would produce meaningful public comment since it merely recognizes changes in the law with respect to the nomination process for the USMMA and the discretion granted to the Secretary to recover costs of education at the USMMA from persons who did not fulfill their service obligations. Accordingly, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(c) and (d), 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.

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 Part 310

Education, Grant programs, Seamen.

PART 310—MERCHANT MARINE TRAINING [AMENDED]

Accordingly, MARAD hereby amends 46 CFR part 310, subpart C as follows:

1. The authority citation continues to read as follows:

Authority: Secs. 204(b), 1301–1308, Merchant Marine Act, 1936, as amended, (46 App. U.S.C. 1114(b), 1295–1295g); 49 CFR 1.66.

§ 310.53 [Amended]

2. Section 310.53(a) is amended as follows:

a. In paragraph (a)(1) by removing the text beginning with the words, ''the Governor of American Samoa'', preceding the word ''may'', and inserting in lieu thereof the words, ''the Delegate to the House of Representatives from American Samoa.''

b. In paragraph (a)(2) in the table by amending the entry for American Samoa by revising the entry under the heading ''To be nominated by—'' to read ''The Delegate to the House of Representatives representing American Samoa.''

§ 310.58 [Amended]

3. Section 310.58 is amended in paragraph (e)(2) by adding at the end thereof the following sentence. ''If the Secretary of Defense is unable or unwilling to order an individual to active duty, the Secretary of Transportation may recover from the individual the cost of education provided by the Federal Government by requesting the Attorney General to begin court proceedings to recover the costs of that education.''

§ 310.66 [Amended]

4. Section 310.66 is amended in paragraph (c) by adding at the end thereof the following sentence: ''The Secretary may allow, upon approval of the Secretary of State, additional individuals from the Republic of Panama to receive instruction at the Academy on a reimbursable basis.''

Dated: August 22, 1995.

By Order of the Maritime Administrator.

Joel Richard,

Secretary, Maritime Administration.

[FR Doc. 95–21194 Filed 8–25–95; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[GC Docket No. 92–223; FCC 95–346]

Broadcast Indecency

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules on enforcement of prohibitions against broadcast indecency so as to be in compliance with the instructions given by the United States Court of Appeals for the D.C. Circuit in *Action for Children's Television* v. *FCC.* The intended effect of the Court's instruction is to make the time periods during which the indecency ban applies the same for both public broadcasters and commercial broadcasters.

EFFECTIVE DATE: August 28, 1995.

FOR FURTHER INFORMATION CONTACT: Steve Bailey, Office of General Counsel, (202) 418–1720.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

Adopted: August 7, 1995.
Released: August 18, 1995.

By the Commission:

1. By this Order, the Commission conforms its rules to comply with the instructions given by the United States Court of Appeals for the District of Columbia Circuit in *Action for Children's Television* v. *FCC,* No. 92–1092 (decided *en banc* June 30, 1995; mandate issued July 12, 1995). Although the Court generally upheld the Commission's implementation of Section 16(a) of the Public Telecommunications Act of 1992, Pub. L. No. 102–356, 106 Stat. 949 (1992), relating to the prohibition on indecent programming by broadcast stations, it remanded the case to the Commission ''with instructions to limit its ban on the broadcasting of indecent programs to the period from 6:00 a.m. to 10:00 p.m.'' *Id.,* slip op. at 30. The effect of the Court's instruction is to make the time periods during which the indecency ban applies the same for both public broadcasters and commercial broadcasters. Thus, we are hereby amending Section 73.3999 of the Commission's Rules, 47 C.F.R. § 73.3999, to provide that no licensee of a radio or television broadcast station shall broadcast on any day between 6 a.m. and 10 p.m. any material which is indecent.

2. Accordingly, it is ordered, That Section 73.3999 of the Commission's Rules, 47 CFR § 73.399, is amended as set forth below.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Appendix—Amendatory Text

Part 73, Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334.

2. Section 73.3999 is revised to read as follows:

§ 73.3999 Enforcement of 18 U.S.C. 1464 (restrictions on the transmission of obscene and indecent material).

(a) No licensee of a radio or television broadcast station shall broadcast any material which is obscene.

(b) No licensee of a radio or television broadcast station shall broadcast on any day between 6 a.m. and 10 p.m. any material which is indecent.

[FR Doc. 95–21247 Filed 8–25–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 390

RIN 2125–AC51

Accident Recordkeeping Requirements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendments.

SUMMARY: This document technically amends the definition of the term *accident* in FHWA's Federal motor carrier safety regulations to include language that was inadvertently omitted from a previous final rule, and technically amends those regulations to indicate that the Office of Management and Budget has approved the accident recordkeeping requirements as amended by this rule. The full intention of the FHWA was to require interstate motor carriers to include their accidents involving a commercial motor vehicle engaged in intrastate commerce on accident registers. The definition of the term *accident* is amended to reflect this intention.

EFFECTIVE DATE: September 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Peter C. Chandler, Office of Motor Carrier Research and Standards, (202) 366–5763, or Mrs. Allison Smith, Office of the Chief Counsel, (202) 366–0834, 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: On February 2, 1993, the FHWA published a final rule in the **Federal Register** (58 FR 6726) which removed the accident notification and reporting requirements in part 394 of the Federal Motor Carrier Safety Regulations (FMCSRs) and added a requirement in part 390 that motor carriers maintain an accident register consisting of a list of information about accidents and copies of all accident reports required by governmental authorities or insurers. The accidents that must be included in an accident register were specified by the definition of the term *accident* in 49 CFR 390.5. The term *accident,* as currently defined, does not include an accident involving a commercial motor vehicle engaged in intrastate commerce. This type of accident was covered by the accident notification and reporting requirements in part 394. The FHWA inadvertently failed to include this type of accident in the definition of the term *accident.* The full intention of the FHWA was to require interstate motor carriers to include their accidents involving a commercial motor vehicle engaged in intrastate commerce on accident registers.

The FHWA is therefore making a technical amendment to the definition of the term *accident* to include accidents involving a commercial motor

vehicle engaged in intrastate commerce. The phrase ''in interstate or intrastate commerce'' is being inserted into the definition of the term *accident.* This technical amendment will require interstate motor carriers to include accidents involving a commercial motor vehicle engaged in interstate or intrastate commerce in their accident registers. There is a long precedent of interstate motor carriers being required to file and/or maintain reports about accidents involving a commercial motor vehicle engaged in interstate, foreign, or intrastate commerce. This technical amendment clarifies the FHWA's intent regarding this issue.

An accident register, which includes all accidents meeting this amended definition, assists the FHWA in evaluating a motor carrier's accidents and developing countermeasures to reduce future accidents. The FHWA is also able to compare a motor carrier's accident register with the accident data from the automated State accident reporting system to ensure that all accidents as defined in § 390.5 are accounted for in the system.

Rulemaking Analyses and Notices

Prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because this rule does not impose any additional duty or obligation on any motor carrier. Instead, it simply reinstates the requirement to keep records on accidents involving a commercial motor vehicle operating in intrastate commerce, which was inadvertently omitted when the accident recordkeeping requirements were last revised, and provides notice to the public that the Office of Management and Budget has approved the information collection burden of the accident recordkeeping requirements of part 390, as amended by this rule. Therefore, in this purely procedural action, the FHWA is not exercising its discretion in a way that could be meaningfully affected by public comment. In addition, due to the technical nature of this final rule, the FHWA has determined that prior notice and opportunity for comment are not required under Department of Transportation's regulatory policies and procedures, as it is anticipated that such action would not result in the receipt of useful information. Therefore, the FHWA is proceeding directly to a final rule.

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. The FHWA estimates that approximately 87,000 accidents, as defined in 49 CFR 390.5, occur annually. The FHWA believes that the amount of time needed for interstate motor carriers to collect and record the seven elements of information on accident registers is minimal because the information is readily available. In consideration of the total number of accidents which must be included on accident registers and the short period of time necessary to record information about each accident, the economic burden imposed by the accident recordkeeping requirements is minimal. Since the economic burden for maintaining records about all accidents as defined in 49 CFR 390.5 is not significant, the economic burden of the recordkeeping for the portion of these accidents which occur in intrastate commerce is also not significant. 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 action on small entities. This action does not impose any additional duty or obligation on any motor carrier, regardless of its size, because this action simply reinstates a requirement which was inadvertently omitted when the accident recordkeeping requirements were last revised. The majority of small motor carriers do not have an accident, as defined in 49 CFR 390.5, in a given year. Any motor carrier without an accident, as defined in 49 CFR 390.5, in a given year is not required to maintain an accident register for this year. The FHWA certifies that this action will not have a significant 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.

Nothing in this document preempts any State law or regulation. This final rule does not limit the policymaking discretion of the States. Federal funding is available to assist States in implementing and operating their accident reporting systems. Nothing in this document changes any condition for this funding or has any other impact upon State governments.

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

The information collection requirements as amended by this rule have been approved by the Office of Management and Budget in accordance with the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, and assigned the control number of 2125–0526 which expires on March 31, 1998.

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 Part 390

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: August 21, 1995.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA hereby amends title 49, Code of Federal Regulations, subtitle B, chapter III, part 390 as set forth below:

PART 390—[AMENDED]

1. The authority citation for Part 390 continues to read as follows:

Authority: 49 U.S.C. 5901–5907, 31132, 31133, 31136, 31502, and 31504; and 49 CFR 1.48.

2. Section 390.5 is amended by revising the definition of *Accident* to read as follows:

§ 390.5 Definitions.

* * * * *

Accident means—

(1) Except as provided in paragraph (2) of this definition, an occurrence involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in:

(i) A fatality;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(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.

(2) The term *accident* does not include:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo; or

(iii) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in § 571.3 of this title) by a motor carrier and is not transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with § 177.823 of this title.

* * * * *

§ 390.15 [Amended]

3. Section 390.15 is amended by adding the following parenthetical language at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 2125–0526)

[FR Doc. 95–21304 Filed 8–25–95; 8:45 am]

BILLING CODE 4910–22–P

Proposed Rules

Federal Register
Vol. 60, No. 166
Monday, August 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 THE TREASURY

Office of Thrift Supervision

12 CFR Parts 500, 504, 510, 515, 529, 533, 543, 545 552, 556, 562, 563, 563d, 563g, 567, 571, 583, and 584

[No. 95–160]

RIN 1550–AA85

Regulatory Review

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: Pursuant to section 303(a) of the Community Development and Regulatory Improvement Act of 1994 (CDRIA) and the Regulatory Reinvention Initiative of the Vice President's National Performance Review, the Office of Thrift Supervision (OTS) has reviewed chapter V of the Code of Federal Regulations (CFR), where OTS regulations are codified. OTS reviewed each regulation to determine whether it is necessary, imposes the least possible burden consistent with safety and soundness, and is written in a clear, straightforward manner.

As a result of this review, OTS has identified a number of regulations that can be eliminated as duplicative or unnecessary. The agency is today proposing to remove those sections from its regulations. OTS has also identified a number of ways in which its regulations could be streamlined or reorganized into a more user-friendly document. Before proposing such structural changes, however, the agency is today requesting comment on whether such changes would sufficiently improve the CFR to merit the effort to make the changes and the effort required from the industry to become familiar with the new structure.

DATES: Comments must be received on or before October 27, 1995.

ADDRESSES: Send comments to Chief, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street NW., Washington, D.C. 20552, Attention Docket No. 95–160. These submissions may be hand-delivered to 1700 G Street NW., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Comments will be available for inspection at 1700 G Street NW., from 1:00 p.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Therese L. Monahan, Project Manager, Thrift Policy (202) 906–5740; or Valerie J. Lithotomos, Counsel (Banking and Finance), Regulations and Legislation Division, Chief Counsel's Office, (202) 906–6439, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Today, the OTS is publishing the first in a series of proposals to streamline, update, and generally improve its regulations. The OTS conducted a comprehensive review of its regulations in the spring of 1995 pursuant to section 303 of CDRIA and the Administration's Reinvention Initiative.[1] In response to the Administration's mandate to create grass roots partnerships and the desire to negotiate, not dictate rules, OTS sought specific industry comments on regulatory burden through town meetings and industry roundtable meetings held by the Acting Director and Regional Directors. In addition, OTS obtained further industry input from America's Community Bankers (ACB).[2] The ACB surveyed some of its members and offered a summary of survey findings to the OTS. ACB's survey collected industry feedback on OTS's regulatory structure and various communication vehicles used to disseminate OTS interpretations and guidance. ACB reported a generally favorable response to OTS's overall plan to streamline and reorganize its regulations in order to reduce regulatory burden.

OTS Staff in both the Washington and Regional Offices reviewed the regulations and policy statements contained in chapter V of the CFR to ''streamline and modify those regulations and policies in order to improve efficiency, reduce unnecessary costs, * * * eliminate unwarranted constraints on credit availability [and] remove inconsistencies and outmoded and duplicative requirements.''[3]

Preliminary staff recommendations for improvements to the regulations were based on the following criteria:

- Is the regulation current?
- Can the regulation be eliminated without endangering safety and soundness, diminishing consumer protection, or violating statutory requirements?
- Is the regulation's subject matter more suited for a policy statement?
- Is the regulation consistent with the regulations of the other federal banking agencies?
- Can the regulation be understood without consulting an attorney?
- Is the regulation written as a stand-alone regulation, without confusing cross-references?
- Is the regulation required by statute?
- Are the regulations/parts/sections ordered in a logical fashion?

This review identified a number of ways in which OTS's regulations could be improved. The agency is undertaking a five-step process to improve its regulations. Today's proposal reflects the first two steps of that process.

First, the agency seeks public comment on a number of potential ways OTS could streamline and restructure its regulations to make them more user-friendly. These potential improvements, discussed in Section II of this preamble, have been suggested by OTS Washington and Regional staff. OTS is particularly interested in whether such reorganization and restructuring would make OTS's regulations easier for the public to use.

Second, the proposal seeks comment on the deletion of a number of specific parts and sections the agency has identified as outdated or unnecessary. These regulations are discussed more fully in Section III of this preamble. The agency also seeks comment on some technical modifications to its regulations, including changes made to update cross-references and definitions.

[1] *See* the Department of Treasury's Summary Report on the President's Regulatory Reform Initiatives.

[2] America's Community Bankers is a trade association representing 2,000 savings associations and community financial institutions and related business firms.

[3] Section 303 of CDRIA, 12 U.S.C. 4803(a)(1)(A), (B).

As a third step in this reinvention of regulations, the agency expects to issue over the next year a series of more substantive proposals to make more significant changes in a number of key areas of its regulations, including regulations governing lending, subsidiaries, charter and by-laws, insurance, preemption, and adjustable-rate mortgages. Comments received on the organizational changes proposed today will also be considered in each of those more substantive reviews.

The fourth step in this reinvention is OTS's participation in the interagency review of its regulations, along with those of the other federal banking agencies, with a view to implementing section 303(a)(2) of CDRIA by making regulations and guidance implementing common statutory provisions and supervisory policies more uniform. This review is taking place under the auspices of the Federal Financial Institutions Examination Council.

Finally, the agency has identified some regulations that would require statutory changes before the regulation could be removed or updated. These include removing the liquidity regulation at part 566, which is required by section 6 of the HOLA, removing the requirement that Federal savings associations maintain membership in a Federal Home Loan Bank, which is required by section 5(f) of the HOLA, and providing additional lending flexibility under the Qualified Thrift Lender test, which is required by section 10(m) of the HOLA. The agency has submitted potential legislative changes on these and other burdensome statutory provisions to the Congress.

II. Request for Comment on Possible Reorganization of OTS Regulations

OTS's current regulatory structure has evolved over the years in response to sweeping statutory changes and changes in policy direction based on the difference in the general condition and makeup of the thrift industry. When chapter V of the CFR is viewed as a whole, some subject areas are addressed in multiple areas of the regulations. For example, a savings association considering whether to create a service corporation or an operating subsidiary would currently, at a minimum, look at §§ 545.74, 545.81, 563.37, 563.41, and 571.21. An institution considering a merger with another depository institution might have to review regulations in parts 546, 552, and 563.

Historically, OTS's predecessor agency, the Federal Home Loan Bank Board (FHLBB), looked at the source of statutory authority and charter type of affected institutions in organizing subchapters of chapter V of the CFR. Regulations in former subchapter B (12 CFR 520 *et seq.*) were promulgated pursuant to the FHLBB's authority under the Federal Home Loan Bank Act (FHLBA); regulations in subchapter C (12 CFR 540 *et seq.*) were promulgated under the FHLBB's chartering authority for federal savings associations under the Home Owner's Loan Act (HOLA); and regulations in subchapter D (12 CFR 560 *et seq.*) were promulgated under the FHLBB's authority as operating head of the Federal Savings and Loan Insurance Corporation (FSLIC) under title IV of the National Housing Act (NHA) for all FSLIC-insured institutions.

The Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) created the OTS in 1989 and substantially overhauled the statutes governing the regulation of savings associations. Title IV of the NHA was repealed and some authorities under which the FHLBB had issued regulations pursuant to the FHLBA and title IV of the NHA were transferred to the HOLA, which itself was revised. The HOLA now serves as the primary statutory authority for OTS regulation of all savings associations, regardless of charter.

In October, 1989, OTS, the Federal Deposit Insurance Corporation (FDIC), and the Federal Housing Finance Board divided up the regulations of the former FHLBB and FSLIC among themselves in accordance with their new statutory responsibilities. In November, 1989, OTS published a recodification of its regulations. This recodification reflected some reorganization of the regulations into a more user-friendly format, but because of time constraints did not include a total structural overhaul.

From January, 1992 until January, 1993, OTS reviewed and revised its regulations with a view to removing outdated and unnecessary regulations. It held public hearings in February, 1992 and requested industry comments on regulations that could be removed or modified. It published a notice of proposed rulemaking in September, 1992 and adopted a final regulation in January, 1993 that removed a number of obsolete or redundant regulations. The agency did not propose as part of that process to restructure the regulations, remove regulations that duplicated statutory authority, or revise regulations setting forth certain implied powers. At that time, the agency believed that such changes could result in more confusion than benefit for those subject to OTS regulations.[4]

[4] *See* 57 FR 40350 (September 3, 1992).

If the OTS were drafting its regulations on a totally clean slate, the regulations would not be organized as they are now. However, the cost of changing an existing and familiar structure could exceed the benefit derived from creating a more logical organizational structure. As part of the substantive review of major areas of OTS regulations such as lending, subsidiaries, and corporate governance, OTS is considering, and seeks public input on, how much restructuring related regulations would help CFR users. Some specific types of reorganization that would cut across subject areas are set forth below.

A. Should OTS Consolidate Common Definitions of General Applicability now in Parts 541, 561, 563, and 583 in a new Part 501?

1. Background

Currently, several subchapters of OTS's regulations have definitional parts. In the 1989 recodification of OTS's regulations, the agency removed duplicative definitions from parts 541 (definitional part for subchapter C) and 561 (definitional part for subchapter D) and clarified that definitions in each of those parts applied to both subchapters unless a specific regulation provided otherwise. Subchapter F, the regulations for savings and loan holding companies, has its own definitional part, part 583, with some duplicative, some unique, and some slightly different definitions.

Other parts and sections, such as part 564 (Appraisals), part 567 (Capital), and § 563.51 (Qualified Thrift Lender), contain definitions that generally apply only to that part or section. Recent OTS regulations have included definitions for new terms in the revised section, in part because this is the common practice at the other banking agencies. Some of these section- or part-specific regulations have themselves been cross-referenced in other sections. For example, the agency's transactions-with-affiliates regulation, 12 CFR 563.41, defines ''subsidiary'' by referring to § 567.1(dd), the capital regulation, but defines ''savings association'' by referring to § 583.21, the definitions used for savings and loan holding companies.

2. Possible Revision

The OTS is considering consolidating all definitions used or referenced in more than one part or section into a new part 501. Definitions used only in a particular part or section would remain with that unit. Placing all common definitions in a new part 501 would significantly simplify the structure of

OTS's regulations. We expect that it may save time for users searching for a definition and trying to determine the regulations to which the definition applies. It may also minimize confusion resulting from duplicative or conflicting definitions of the same term and reduce the amount of cross-referencing needed. As with any structural change, users might experience initial confusion until they became familiar with the new structure. When OTS did a similar consolidation of definitions on a smaller scale in 1989, however, no major problems were reported.

B. Should OTS Consolidate the Remaining Safety and Soundness Regulations in Part 545 Into Part 563?

1. Background

In 1989, FIRREA amended both the HOLA and the Federal Deposit Insurance Act (FDIA) in a number of ways that subjected both federally and state chartered savings associations to similar requirements. Additional statutory changes in the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) have resulted in more similar authority and safety-and-soundness-based restrictions for state and federally chartered entities. Under section 28 of the FDIA, the type and amount of activities in which state-chartered savings associations may engage without specific FDIC approval are tied more closely to the types and levels of activities permitted for federal savings associations.

As a result of these statutory changes and a general effort by OTS to remove duplicative regulations and apply regulations consistently to institutions regardless of charter type, most new safety-and-soundness-based regulations have been placed in subchapter D, usually in part 563. Additionally, over the years a number of regulations found in parts 545 and 563 have been written to include cross-references to regulations found in the other part. For example, definitional parts 541 and 561 each already cross-reference their counterpart. The real estate regulation for federal savings associations at § 545.32 cross-references the agency's general real estate lending regulations at §§ 563.35(d), 563.100, and 563.101. Similarly, the regulation on high loan-to-value loans by all savings associations found at § 563.37 cross-references restrictions found in the federal savings association regulations at § 545.38.

2. Possible Revisions

The OTS seeks input from the industry and other users of its regulations on whether its regulations would be improved by consolidating all safety-and-soundness-based regulations into part 563. The purpose of this consolidation would be to simplify and streamline the structure of OTS regulations, not to impose additional restrictions on state-chartered institutions. If institutions find the current structure familiar and workable, such a consolidation could create an unnecessary burden. The agency is also concerned that such a consolidation could be perceived as an attempt to increase the regulatory burden on state-chartered associations, rather than an attempt to consolidate requirements applicable to savings associations regardless of their charters that are currently scattered in several subchapters of chapter V.

As part of today's proposal, the agency is proposing to eliminate a number of regulations applicable to federal savings associations that merely cross-reference or duplicate requirements found in part 563. If OTS decided to consolidate the regulations further, it would first review the targeted regulations in part 545 to determine which safety-and-soundness-based regulations or portions of those regulations originally applicable to federal savings associations were appropriate for all savings associations. Any remaining restrictions found to be unnecessary would be removed from the regulations before the regulations were consolidated into part 563.

C. Should OTS's Regulations Comprehensively Codify Thrift Powers or Should OTS Delete Regulations That Only Repeat Statutory Authority or set Forth an Implied Power?

1. Background

Chapter V of the CFR, where OTS's regulations are codified, is inconsistent. It repeats some, but not all, statutory powers and restrictions and some, but not all, implied powers and restrictions on those powers. This has led to confusion.

In discussing regulations with OTS field personnel, some institutions have indicated that they believe that chapter V of the CFR is a self-contained document. Others, while recognizing that Chapter V is not currently the sole repository of information on thrift powers, believe that it would be more useful if it codified all implied and statutory powers. Still others believe that Chapter V should be simplified by removing all regulations that merely repeat statutory authority.

a. Statutory powers. Over the years, the OTS and its predecessor, the FHLBB, have generally omitted or removed regulations that do no more than repeat statutory language or cite statutory authority in the course of other regulatory burden reduction projects. The agency's view has been that removing duplicative language from the regulations can minimize necessary updating when Congress amends a statute.

Currently, OTS has specific regulations and portions of regulations that repeat statutory language (*e.g.*, §§ 545.44 (mortgage transactions with the Federal Home Loan Mortgage Corporation) and 584.3 (transactions with affiliates)). Other regulations repeat statutory authority in one paragraph and then set limitations on that authority in succeeding paragraphs (*e.g.*, §§ 545.39 (loans guaranteed under the Foreign Assistance Act) and 545.46 (commercial loans)).

b. Implied powers. Some OTS regulations set forth an implied power of savings associations (a power that is incidental to the exercise of powers expressly set forth in statutes or regulations), such as §§ 545.17 (funds transfer services) and 556.12 (deposit assurance of direct deposit of Social Security payments). Other implied powers of savings associations, and interpretations of the scope of express statutory powers, have not been codified as regulations. Savings associations must look to legal opinions or regulatory handbooks for information on these powers. This reflects the factually specific manner in which issues on implied powers are usually first presented to the agency. OTS's regulations have never completely reflected all of savings associations' implied powers or restrictions on these powers.

2. Proposed revisions

OTS is considering which of two diametrically opposed approaches might result in a more useful Chapter V.

The first alternative would be to include all statutory and implied powers of thrifts in OTS regulations. This would create a comprehensive, but significantly longer, regulatory document. A truly self-contained document that includes a complete recitation of both statutory and implied powers might be a valuable resource, but could become quickly outdated as statutes are amended. Given the evolving nature of the market for financial services, a comprehensive listing of implied powers in the regulations would definitely require frequent updating.

The second alternative would be to eliminate all regulations that merely

repeat statutory powers or that list implied powers. Handbooks or legal opinions would provide a more complete discussion. This would decrease total CFR pages and streamline the regulations. A variation of this alternative might be to increase specific citations to statutory authority in the regulations but remove repetitions of statutory language. A regulation could set forth the existence of implied powers and the standards used to determine those powers.

Pending public comment on these alternatives, today's proposal takes a middle position. It suggests deletion of several regulations that merely refer to statutory authority without any additional regulatory interpretation. Today's proposal would not, however, remove those regulations that contain paragraphs setting forth both statutory authority and regulatory restrictions on that authority because the OTS seeks public input on whether this format is more helpful than burdensome. The proposal also neither removes the regulations listing certain implied powers of savings associations nor adds regulations setting forth other implied powers.

D. Should Policy Statements in Parts 556 and 571 Be Deleted and Recast Either as Regulations or Placed as Guidance Placed in the Appropriate Regulatory Handbook?

1. Background

Parts 556 and 571 of the CFR contain policy statements adopted by OTS or its predecessor agency, the FHLBB, after notice and comment rulemaking. The original concept behind codifying policy statements in the CFR was to make these agency interpretations and guidance readily available to savings associations. Since 1989, however, OTS has been gradually eliminating policy statements from these parts and incorporating their substance either into regulations after notice and comment rulemaking or as guidance in regulatory handbooks. These handbooks are provided to all savings associations and are available to others by subscription. The handbooks compile information from various sources on current agency interpretations and guidance and contain more detail than the CFR.

2. Possible Revisions

One alternative is to review each of the policy statements currently appearing in the CFR and determine, after notice and comment, whether it should be adopted as a regulation. Those not adopted as regulations would be placed as guidance in the appropriate regulatory handbooks. This would streamline the CFR and aid in providing a more concise and less confusing organizational structure.

Another alternative would be to continue to include some policy statements in Chapter V of the CFR where the agency believed that this would be the best vehicle for acquainting savings associations and other CFR users of the agency's most significant interpretations. The agency seeks comments on what criteria would be most useful in choosing which policy statements to codify, if this approach were chosen.

E. What is the Best Method of Communicating Different Types of Information, Guidance, Policies, Restrictions, and Requirements?

1. Background

Savings associations that look only at the CFR for information on OTS interpretive rules, policies, procedures, and guidance have barely scratched the surface of available materials. New issues arise and are addressed in fact-specific situations. Some are first presented by a request for a legal opinion, others through an on-site examination, others in discussions with an interagency task force. OTS also communicates policy positions via Regulatory Handbooks, Transmittals, Thrift and Regulatory Bulletins, legal opinions, Letters to Chief Executive Officers (CEO Letters), preambles to regulations, instructions to the Thrift Financial Report, press releases, and speeches.

There are vast differences in the types and time sensitivity of information communicated. It is not likely that the agency could ever adopt just one form of communication. However, the agency is striving to keep communications as clear, simple, and timely as possible.

Because not all methods of communication reach all of OTS's audiences equally, confusion has arisen in some rapidly developing areas. For example, OTS sent CEO Letters to savings associations notifying them of delays in implementation of the interest-rate risk component of the capital regulation while the agency developed an appeals process. Law firms who needed that information in preparing disclosure statements discussing capital requirements for those savings associations did not receive this information directly. Some discussions on the scope of regulations appear only in the preamble accompanying those regulations when they are published in the **Federal Register**, not in the CFR. The agency's communications on implied powers usually take the form of legal opinions, which are available through computerized legal databases that may not be regularly accessed by some savings associations.

The agency has also heard complaints from some users that some of the more informal means of communication, such as press releases, speeches, and CEO letters are not indexed or numbered and are thus more difficult to identify and obtain after issuance.

2. Request for Comment in Developing Possible Revisions

The agency is considering, and seeks public input on, establishing standards for which means of communication would be preferred for particular types of information. Among the criteria that could be used in determining the appropriate method would be: (1) The urgency of communicating the information; (2) the audience to be reached (both primary and secondary audiences); (3) whether industry or public input must be obtained through notice and comment rulemaking; and (4) whether the situation to be addressed is evolving, increasing the likelihood for changes in the agency's position. The agency is also considering whether there are more ways in which the agency can receive and make information available electronically.

III. Proposed Deletions and Modifications to Regulations

Set forth below are regulations that OTS is proposing to delete because they are no longer useful. The OTS is also proposing to delete cross-references to sections that are being deleted.

A. Regulations To Be Removed or Modified Because of Obsolescence or Redundancy

1. Recordkeeping

a. Statements of Condition (562.3). The OTS is proposing to remove the regulation requiring savings associations to publish an annual statement of condition in a newspaper and to make such ''counter statements'' available at each home and branch office. These requirements have proven burdensome and unnecessary. The newspaper publication requirement was added to parallel a statutory requirement that national banks publish such statements of condition. That requirement for national banks was repealed in 1994. The Acting Director of OTS waived the requirement for savings associations to make such publications in December, 1994.

The agency has found that counter statements are not often used by savings

association customers and duplicate information already available. The other federal banking agencies do not impose a similar requirement on the depository institutions they regulate. A savings association customer seeking such information may ask the savings association for it, or may obtain the information from the OTS.

b. Filing and signature requirements (563g.5). The OTS proposes to decrease the required number of copies of an offering circular filed in connection with securities offerings under part 563g to reduce the regulatory burden and associated costs. The number of required copies of offering circulars would be reduced from 25 to 9.

2. Policy Statements (556.4, 556.6, 556.8, 556.9, 556.11, 556.14, 556.15)

As discussed above in Section II, the OTS is seeking comment on whether it should remove all of its policy statements from the CFR, adopting some as regulations after notice and comment and transferring others to guidance. As part of its review, the OTS has identified a number of policy statements that are either outdated, merely reflect current business practice, or otherwise provide no meaningful guidance beyond that contained in the regulations themselves. The agency is proposing to delete those statements. Section 556.4 (Insurance) duplicates sections 571.4 and 563.35. Section 556.8 (Suretyship) duplicates section 545.103; section 556.9 (Imposition of late charges and due-on-sale clauses) duplicates the contents of parts 590 and 591; section 556.11 (Prepayment penalty on mortgage loans) reiterates section 545.34(c); and section 556.14 (Chief executive officer of a branch office) duplicates information found in the model bylaws for Federal mutual associations. Section 556.6 (Savings accounts) is not totally consistent with Regulation DD,[5] and is otherwise outdated. Section 556.15 (Drive-in and pedestrian facilities) contains some outdated provisions and otherwise merely reiterates common business practice.

3. Operational Regulations

The OTS proposes to remove a number of obsolete or duplicative regulations addressing a variety of operational issues for savings associations.

a. Electronic Fund Transfers (Part 533). Part 533 provides that electronic fund transfers by savings associations are subject to Regulation E, 12 CFR part 205 (1995). OTS proposes to delete this part in its entirety because it is unnecessary and may cause confusion. By its terms, Regulation E applies to consumer electronic funds transfers at all financial institutions, including savings associations. Other regulations that apply to all financial or depository institutions are not separately cross-referenced in OTS's regulations.

b. Withdrawal requests (545.15). The OTS is proposing to remove this section because it imposes unnecessary restrictions.

c. Issuance of mutual capital certificates (545.18); Issuance of net worth certificates (545.19); Borrowing, issuing obligations and giving security (545.20); Employment contracts (545.122); Negotiable order of withdrawal accounts authorized (563.8); and Form, return and maturity of securities (563.72). These sections are proposed for deletion because they either merely repeat that a savings association has the authority to do something that is authorized elsewhere or that the activity is subject to restrictions set forth in other regulations. Section 545.18 repeats authority found in section 5(b)(5) of the HOLA and refers to § 563.74, which governs all mutual capital certificates issued by savings associations. Section 545.19 repeats authority found in section 13 of the FDIA. Section 545.20 repeats authority found in section 5(b) of the HOLA. Section 545.122 duplicates section 563.39. Section 563.8 repeats authority found in 12 U.S.C. 1832. Section 563.72 merely reiterates that securities approved by OTS under other provisions are approved.

d. Financial futures transactions (545.136) and Financial options transactions (545.137). These sections are proposed for deletion because they merely reiterate that federal savings associations may engage in these types of transactions subject to the limitations set forth in 12 CFR Part 563, Subpart F. The agency is separately reviewing Subpart F for potential future updating and revision.

e. Limitation on transaction of business (552.2–4). This section is proposed for deletion because it merely reiterates that part 552 sets forth when companies may engage in business as a Federal stock association.

f. Membership in a Federal Home Loan Bank (563.49). This section expired on April 19, 1995, and, thus, should be removed. Federal savings associations are still required to maintain FHLB membership by section 5(f) of the HOLA and the FHLBA.

4. Regulations on Savings and Loan Holding Companies and Affiliates

a. Loans and other transactions with affiliates and subsidiaries (563.41(d)(1)). The statutory provisions limiting thrifts' full use of the sister bank and thrift exemption provisions of sections 23A and 23B of the Federal Reserve Act expired on December 31, 1994. OTS therefore proposes to remove this parallel regulatory provision.

b. Transactions with affiliates (584.3). This section is proposed for deletion because it merely sets forth a statutory restriction without any regulatory interpretation or guidance.

c. Penalty for loss of QTL status (584.6). This section is proposed for deletion because it duplicates the penalties stated in section 563.52, which OTS proposes to amend to refer to the statutory penalties.

5. Organizational Revisions (Parts 500, 504, 515, and 529; Sections 510.1, 510.3, 543.12, 563d.200.30, and 584.11)

a. Simplification of Part 500. The OTS is proposing today to simplify part 500, which sets forth its statutory authority and organizational structure. The OTS proposes to delete sections 500.3, 500.4, and 500.5 and incorporate them into the general statement of authority at § 500.1. Because the current recitation of OTS's structure is out of date, the OTS proposes to delete sections 500.11 through 500.17 and to modify section 500.10 accordingly. The OTS will publish a notice setting forth its current organizational structure. As that structure is modified in the future, revised notices will be published.

b. National Security Information (Part 504). The OTS proposes to delete part 504 in its entirety. Part 504 was issued by the FHLBB, predecessor to the OTS, pursuant to the requirements of subpart E of Executive Order 12356, April 2, 1982 (Order). The Order applies to the Department of the Treasury, which has issued implementing regulations. These regulations apply to the OTS as a component part of the Treasury Department. Thus, the OTS proposes to delete this part because it is unnecessary.

c. Use of Penalty Mail in the Location and Recovery of Missing Children (Part 515). The Department of Justice's Office of Juvenile Justice and Delinquency Prevention guidelines are promulgated pursuant to the authority of § 3220(a)(1) of title 39 of the United States Code. Pursuant to § 3220(a)(2), each ''executive department and independent establishment of the Government of the United States shall prescribe regulations under which penalty mail sent by such

[5] 12 CFR Part 230 (1995).

department or establishment may be used in conformance with the guidelines prescribed under paragraph (1).'' As a component of the Treasury Department, rather than itself an executive department or independent establishment, the OTS is subject to any regulations Treasury may adopt on this topic. Accordingly, OTS proposes to remove part 515.

d. Nondiscrimination in Federally Assisted Programs (Part 529). The purpose of part 529 was to effectuate the provisions of title VI of the Civil Rights Act of 1964, which prohibits, among other things, discrimination in programs and activities receiving federal assistance. The OTS is not authorized to extend any federal financial assistance to any program or activity.

This part was initially adopted by the FHLBB. The FHLBB established a Housing Opportunity Allowance Program in the early 1970's that provided federal assistance through the Federal Home Loan Banks to provide housing for low- and middle-income families. That program effectively ceased to exist in 1978. Thus, part 529 is unnecessary and the OTS proposes to delete it.

e. Miscellaneous Organizational Regulations (Sections 510.1, 510.3). Section 510.1 sets forth agency policy on *ex parte* communications in contested applications. Section 510.1 is proposed for deletion because it is confusing, not consistent with the Administrative Procedure Act (APA), and does not reflect current agency policy. This proposed deletion would not affect *ex parte* communications in adjudicative proceedings under the APA, which are governed by part 509. OTS will review the procedures currently contained in § 510.1 and transfer any remaining relevant provisions to the Applications Processing Handbook. The OTS also proposes to delete section 510.3 because it is unnecessary. The section simply repeats the obvious: organizational regulations of the OTS are to be read as a whole with other regulations of the agency.

f. Bank Insurance Fund-insured Federal savings banks (543.12). This regulation merely repeats OTS's statutory authority under section 5(o) of the HOLA to issue a Federal charter to a former state-chartered savings bank that will maintain its deposit insurance by the Bank Insurance Fund. OTS proposes to delete the regulation.

g. Delegation of authority to the Chief Counsel (563d.200–30 and 563g.22). In order to provide greater organizational flexibility, the OTS has been removing specific delegations of authority from its regulations. Delegations of authority are now contained in Director's Orders and do not need to be codified in regulation. Therefore, OTS proposes to remove these regulations and issue the appropriate delegations in Director's Orders.

h. Hearings (584.11). This regulation applies to hearings on applications to the OTS regarding savings and loan holding companies. The OTS is preparing a Thrift Bulletin setting forth the agency's current procedures for hearings or other appeals on all types of applications. Accordingly, the OTS proposes to remove § 584.11.

B. Other Technical Amendments

1. Definition of Unimpaired Capital and Unimpaired Surplus (563.41 and 563.43)

In March, 1995, the OTS revised its definition of ''unimpaired capital and unimpaired surplus'' for purposes of its loans-to-one-borrower regulation [6], 12 CFR 563.93, to follow the newly revised definition of ''capital and surplus'' promulgated by the Office of the Comptroller of the Currency (OCC) [7] for its lending limits regulation. Recently, the Board of Governors of the Federal Reserve System has proposed to adopt the OCC definition of capital and surplus for its insider lending regulations at Regulation O.[8] To reduce confusion, OTS is today proposing to adopt the same definition of ''unimpaired capital and surplus'' for transactions with affiliates and insider lending regulations as it adopted for the loans-to-one-borrower regulation. This will make these regulations consistent with the proposed change to the Federal Reserve Board definition.

2. Definition of Organization of Economic Cooperation and Development (OECD)-based country (567.1(p))

The other federal banking agencies have proposed to modify the definition of ''OECD-based country'' in their capital regulations and guidelines to reflect a new standard for when the sovereign debt of a country would qualify for the lowest risk-weight category under the risk-based capital regulations.[9] This proposed change is identical to that proposed by the other agencies. It would add a requirement that in order to qualify for the lowest risk weight category, such sovereign debt must not have been restructured in the previous five years. For purposes of this rule, an event of restructuring of external sovereign debt generally would include renegotiations of terms arising from the country's inability or unwillingness to meet its external debt service obligations. Renegotiations of debt in the normal course of business generally do not indicate transfer risk of the kind that would preclude an OECD-based country from qualifying for lower risk-weight treatment. One example of such a routine renegotiation would be a renegotiation to allow the borrower to take advantage of a change in market conditions, such as a decline in interest rates.

IV. Executive Order 12866

The Director of the OTS has determined that this proposed rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

V. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposal will not have a significant economic impact on a substantial number of small entities. The proposal does not impose any additional burdens or requirements upon small entities and lowers several paperwork and other burdens on all savings associations.

VI. Unfunded Mandates Act of 1995

The OTS has determined that the requirements of this proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

List of Subjects

12 CFR Part 500

Organization and functions (Government agencies).

12 CFR Part 504

Classified information.

12 CFR Part 510

Administrative practice and procedure.

12 CFR Part 515

Infants and children, Postal service.

12 CFR Part 529

Administrative practice and procedure, Civil rights.

[6] 60 FR 15861 (March 28, 1995), amending 12 CFR 563.93(b)(11).

[7] *See* 60 FR 8526 (February 15, 1995).

[8] 60 FR 19869 (April 20, 1995).

[9] For a more complete discussion of the background for this proposed change, see the proposed rule published by the OCC at 54 FR 45243 (September 1, 1994).

12 CFR Part 533

Consumer protection, Electronic funds transfers, Savings associations.

12 CFR Part 543

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 556

Savings associations.

12 CFR Part 562

Accounting, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 563d

Authority delegations (Government agencies), Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 563g

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 567

Capital, Savings associations.

12 CFR Part 571

Accounting, Conflicts of interest, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 583

Holding companies, Savings associations.

12 CFR Part 584

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, and under the authority of 12 U.S.C. 1462a, the Office of Thrift Supervision proposes to amend chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 500—ORGANIZATION AND CHANNELLING OF FUNCTIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464.

§ 501.1 [Amended]

§§ 500.3–500.5 [Removed]

2. The existing text of § 500.1 is designated as paragraph (a), the existing texts of §§ 500.3, 500.4 and 500.5 are redesignated as paragraphs (b), (c) and (d), respectively, of § 500.1, and §§ 500.3, 500.4, and 500.5 are removed.

3. Section 500.10 is amended by adding two new sentences at the end of the section to read as follows:

§ 500.10 The OTS or The Office.

* * * The Director directs and carries out the mission of the OTS with the assistance of offices reporting directly to him. One of these offices oversees the direct examination and supervision of savings associations by regulatory staff to ensure the safety and soundness of the industry.

§§ 500.11–500.17 [Removed]

4. Sections 500.11 through 500.17 are removed.

PART 504—[REMOVED]

5. Part 504 is removed.

PART 510—MISCELLANEOUS ORGANIZATIONAL REGULATIONS

6. The authority citation for part 510 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 1462a, 1463, 1464.

§ 510.3 [Removed]

7. Section 510.3 is removed.

PART 515—[REMOVED]

8. Part 515 is removed.

SUBCHAPTER B—CONSUMER-RELATED REGULATIONS

PART 529—[REMOVED]

9. Part 529 is removed.

PART 533—[REMOVED]

10. Part 533 is removed.

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

11. The authority citation for part 543 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

§§ 543.12–543.13 [Removed]

12. Sections 543.12 and 543.13 are removed.

PART 545—OPERATIONS

13. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§§ 545.15, 545.18–545.20, 545.44, 545.122, 545.136–545.137 [Removed]

14. Sections 545.15, 545.18 through 545.20, 545.44, 545.122, 545.136 and 545.137 are removed.

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

15. The authority citation for part 552 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 552.2–4 [Removed]

16. Section 552.2–4 is removed.

§ 552.6–2 [Amended]

17. Section 552.6–2 is amended by removing the phrase ''§ 545.122 of this subchapter'' in paragraph (b), and by adding in lieu thereof the phrase ''§ 563.39 of this chapter''.

PART 556—STATEMENTS OF POLICY

18. The authority citation for part 556 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j–3; 15 U.S.C. 1693–1693r.

§§ 556.4, 556.6, 556.8–556.9, 556.11, 556.14–556.15 [Removed]

19. Sections 556.4, 556.6, 556.8 through 556.9, 556.11, and 556.14 through 556.15 are removed.

PART 562—REGULATORY REPORTING STANDARDS

20. The authority citation for part 562 continues to read as follows:

Authority: 12 U.S.C. 1463.

§ 562.3 [Removed]

21. Section 562.3 is removed.

PART 563—OPERATIONS

22. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106.

§§ 563.8, 563.49, 563.72 [Removed]

23. Sections 563.8, 563.49 and 563.72 are removed.

24. Section 563.41 is amended by removing the period at the end of paragraph (b)(10)(iv) and adding a semicolon in its place, by adding paragraph (b)(11), by removing paragraph (d)(1), by redesignating paragraphs (d)(2) through (d)(7) as paragraphs (d)(1) through (d)(6), respectively, and by removing the phrase ''After January 1, 1995, any'' in the introductory text of newly designated paragraph (d)(1) and adding the word ''Any'' in its place, to read as follows:

§ 563.41 Loans and other transactions with affiliates and subsidiaries.

* * * * *

(b) * * *

(11) The term *capital stock and surplus of the savings association* means ''unimpaired capital and unimpaired surplus'' as defined at § 563.93(b)(11) of this part.

* * * * *

§ 563.42 [Amended]

25. Section 563.42 is amended by removing the phrase ''§ 563.41, any bank, any savings association in a structure qualifying under § 563.41(d)(1) of this part or, after January 1, 1995,'' in paragraph (d)(1), and by adding in lieu thereof the phrase ''§ 563.41 of this part, any bank, or''.

26. Section 563.43 is amended by adding paragraph (f) to read as follows:

§ 563.43 Loans by savings associations to their executive officers, directors and principal shareholders.

* * * * *

(f) References to the term ''unimpaired capital and unimpaired surplus'' shall be deemed to refer to ''unimpaired capital and unimpaired surplus'' as defined at § 563.93(b)(11) of this part.

§ 563.52 [Amended]

27. Section 563.52 is amended by removing the phrase ''§ 584.6 of this chapter'' in paragraph (b), and by adding in lieu thereof the phrase ''12 U.S.C. 1467a(m)''.

PART 563d—SECURITIES OF SAVINGS ASSOCIATIONS

28. The authority citation for part 563d is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78l, 78m, 78n, 78w, 78d–1.

§ 563d.200–30 [Removed]

29. Section 563d.200–30 is removed.

PART 563g—SECURITIES OFFERINGS

30. The authority citation for part 563g continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78l, 78m, 78n, 78p, 78w.

31. Section 563g.5 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 563g.5 Filing and signature requirements.

* * * * *

(b) *Number of copies.* (1) Unless otherwise required, any filing under this part shall include nine copies of the document to be filed with the OTS, as follows:

(i) Seven copies, which shall include one manually signed copy with exhibits, three conformed copies with exhibits, and three conformed copies without exhibits, to the Dissemination Branch, Records Management and Information Policy; and

(ii) Two copies, which shall include one manually signed copy with exhibits and one conformed copy, without exhibits, to the Regional Director.

(2) Within five days after the effective date of an offering circular or the commencement of a public offering after the effective date, whichever occurs later, nine copies of the offering circular used shall be filed with the OTS, as follows: seven copies to the Dissemination Branch, Records Management and Information Policy, and two copies to the Regional Director.

* * * * *

§ 563g.22 [Removed]

32. Section 563g.22 is removed.

PART 567—CAPITAL

33. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

34. Section 567.1 is amended by revising the first two sentences of paragraph (p) to read as follows:

§ 567.1 Definitions.

* * * * *

(p) *OECD-based country.* The term *OECD-based country* means a member of the grouping of countries that are full members of the Organization of Economic Cooperation and Development, plus countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow, but excludes any OECD country which has rescheduled its external sovereign debt in the previous five years. These countries are hereinafter referred to as *OECD countries.* * * *

* * * * *

PART 571—STATEMENTS OF POLICY

35. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§ 571.24 [Amended]

36. Section 571.24 is amended by removing the phrase ''parts 528 and 529'' in paragraph (a), and by adding in lieu thereof the phrase ''part 528''.

PART 583—DEFINITIONS

37. The authority citation for part 583 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

§ 583.17 [Amended]

38. Section 583.17 is amended by removing the phrase ''§ 584.6 of this subchapter'', and by adding in lieu thereof the phrase ''12 U.S.C. 1467a(m)''.

PART 584—REGULATED ACTIVITIES

39. The authority citation for part 584 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

§ 584.2a [Amended]

40. Section 584.2a is amended by removing the phrase ''§ 584.6 of this subchapter'' in paragraph (a)(2), and by adding in lieu thereof the phrase ''12 U.S.C. 1467a(m)''.

§ 584.2–1 [Amended]

41. Section 584.2–1 is amended by removing the phrase ''§ 584.3 of this part'' where it appears in paragraphs (b)(2) and (b)(3) introductory text, and by adding in lieu thereof the phrase ''12 U.S.C. 1467a(m)''.

§§ 584.3, 584.6, 584.11 [Removed]

42. Sections 584.3, 584.6 and 584.11 are removed.

Dated: August 21, 1995.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 95–21160 Filed 8–25–95; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–76–AD]

Airworthiness Directives; Beech Model 400, 400A, and 400T (Military T–1A) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Beech Model 400, 400A, and 400T (military T–1A) airplanes. This proposal would require modification of the standby instrument lighting system. This proposal is prompted by a report that, due to the design of the standby instrument lighting system, the lighting for the standby instruments dimmed to an unacceptable level when the main electrical power was turned off. The actions specified by the proposed AD are intended to ensure that the standby instrument lighting system adequately illuminates the standby instrument, if normal electrical power is lost or is turned off as a result of fire or smoke in the cockpit.

DATES: Comments must be received by October 10, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–76–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Beech Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Harvey Nero, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4137; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals 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 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–76–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–76–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, during evaluation checks of the cockpit lighting of Beech Model 400 airplanes, the lighting for the standby instruments (airspeed indicator, altimeter indicator, and attitude indicator) dimmed to an unacceptable level when the main electrical power was turned off.

During normal operations, the internal lighting for the standby instruments is provided through the dimming control of the pilot's instrument panel. If normal electrical power is lost, the lighting power is then provided through the dimming control of the co-pilot's instrument panel.

Investigation has revealed that setting the dimming control of the co-pilot's instrument panel to the dim position could cause the standby instruments to dim to an unacceptable level when normal electrical power is lost. The cause of the unacceptable level of lighting has been attributed to the design of the standby instrument lighting system.

If normal electrical power is lost or turned off as a result of fire or smoke in the cockpit, the standby instrument lighting system could fail to adequately illuminate the standby instrument. Lighting of the standby airspeed indicator, standby altimeter indicator, and standby attitude indicator may not be adequate for the pilot to discern during an emergency procedure.

The FAA has reviewed and approved Beechcraft Service Bulletin 2563, dated February 1995, which describes procedures for modification of the standby instrument lighting system. The modification will ensure that the standby instrument lights are fully illuminated in the event of loss of normal electrical power.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the standby instrument lighting system. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 189 Model 400, 400A, and 400T airplanes of the affected design in the worldwide fleet. The FAA estimates that 189 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost of the required parts could range from $21 to as much as $471 per airplane. Based on these figures, the total cost impact of the

proposed AD on U.S. operators is estimated to be between $72,009 (or $381 per airplane) and $157,059 (or $831 per airplane).

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

The regulations proposed herein would 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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Beech Aircraft Corporation: Docket 95–NM–76–AD.

Applicability: Model 400 airplanes, serial number RJ–61; 400A airplanes, serial numbers RK–1 through RK–80 inclusive; and 400T (military T–1A) airplanes, serial numbers TT–1 through TT–108 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that the standby instrument lighting system adequately illuminates the standby instrument, if normal electrical power is lost or is turned off as a result of a fire or smoke in the cockpit, accomplish the following:

(a) Within 200 hours time-in-service after the effective date of this AD, modify the standby instrument lighting system in accordance with Beechcraft Service Bulletin 2563, dated February 1995.

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

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

Issued in Renton, Washington, on August 22, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–21257 Filed 8–25–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 898

[Docket No. 94N–0078]

Medical Devices; Proposed Performance Standards for Electrode Lead Wires; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposal that appeared in the **Federal Register** of June 21, 1995 (60 FR 32406). That document proposed to establish a performance standard for electrode lead wires. The agency inadvertently designated a part number that was used in another rulemaking. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Marquita B. Steadman, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765, ext. 145.

SUPPLEMENTARY INFORMATION: FR Doc. 95–15086 appearing on page 32406 in the **Federal Register** of June 21, 1995, is corrected as follows:

1. On page 32406, in the first column, in the heading, the CFR citation ''897'' is corrected to read ''898''.

2. On page 32415, in the third column, ''*21 CFR Part 897*'' is corrected to read ''*21 CFR Part 898*''.

3. On page 32417, in the first column, amendatory instruction ''3'' is corrected to read ''3. New part 898 is added to read as follows:''.

4. On page 32417, in the first column, part 897 is correctly designated as part 898.

Dated: August 21, 1995.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 95–21226 Filed 8–25–95; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC24–1–6793b; FRL–5271–2]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia—Proposed Recodification of the District's Air Pollution Control Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the District of Columbia. This proposed revision consists of a revised format for the District's air pollution control regulations. Except as otherwise indicated, the proposed changes are administrative in nature, and do not substantively revise the current SIP. The intended effect of this proposed action is to ensure that the District of Columbia's current regulatory numbering format and the District of Columbia SIP numbering format are consistent with each other. This proposed action is being taken in accordance with section 110 of the Clean Air Act.

In the Final Rules section of this **Federal Register**, EPA is approving the District'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 received in writing by September 27, 1995.

ADDRESSES: Written comments on this action should be addressed to Marcia L. Spink, Associate Director, Air Programs, Air, Radiation, and Toxics Division (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, District of Columbia Department of Consumer and Regulatory Affairs, 2100 Martin Luther King Avenue, SE., Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 597–1325.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title pertaining to the recodification of the District of Columbia's air pollution control regulations 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 18, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 95–20986 Filed 8–25–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 81

[ID–5–2–7075; FRL–5284–7]

Clean Air Act Promulgation of Reclassification of PM–10 Nonattainment Areas in Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule.

SUMMARY: This action identifies those nonattainment areas in the State of Idaho which have failed to attain the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to ten micrometers (PM–10) by the applicable attainment date. This action also proposes to grant a one-year extension of the attainment date for the Power-Bannock Counties PM–10 nonattainment area and the Sandpoint PM–10 nonattainment area in Idaho.

DATES: Comments on this proposed action must be received in writing by September 27, 1995.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Environmental Protection Agency, Air and Radiation Branch (AT–082), 1200 Sixth Avenue, Seattle Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, 206–553–0782, Air and Radiation Branch (AT–082), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98101.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements Concerning Designation and Classification

Areas meeting the requirements of section 107(d)(4)(B) of the Act[1] were designated nonattainment for PM–10 by operation of law and classified ''moderate'' upon enactment of the 1990 Clean Air Act Amendments. See generally Section 107(d)(4)(B). These areas included all former Group I PM–10 planning areas identified in 52 FR 29383 (August 7, 1987), as further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the National Ambient Air Quality Standards (NAAQS) for PM–10 prior to January 1, 1989.[2] A **Federal Register** notice announcing the areas designated nonattainment for PM–10 upon enactment of the 1990 Amendments, known as ''initial'' PM–10 nonattainment areas, was published on March 15, 1991 (56 FR 11101), and a subsequent **Federal Register** notice correcting the description of some of those areas was published on August 8, 1991 (56 FR 37654). See 56 FR 56694 (November 6, 1991) and 40 CFR 81.313 (for codified air quality designations and classifications in the State of Idaho). All initial moderate PM–10 nonattainment areas have the same applicable attainment date of December 31, 1994.

States containing initial moderate PM–10 nonattainment areas were required to develop and submit to EPA by November 15, 1991, a SIP revision providing for, among other things, implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), and a demonstration either that the plan would provide for attainment of the PM–10 NAAQS by December 31, 1994 or that attainment by that date was impracticable. See Section 189(a).

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[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act as amended (''Act'' or ''CAA''), which is codified at 42 U.S.C. 7401 *et seq.*

[2] Many of these other areas were identified in footnote 4 of the October 31, 1990 **Federal Register** notice.

B. Attainment Determinations

All PM–10 areas designated nonattainment pursuant to section 107(d)(4)(B) of the Act were initially classified ''moderate'' by operation of law upon enactment of the 1990 Clean Air Act Amendments. See Section 188(a). Pursuant to sections 179(c) and 188(b)(2) of the Act, EPA has the responsibility of determining within six months of the December 31, 1994, attainment date whether PM–10 nonattainment areas have attained the NAAQS. Determinations under section 179(c)(1) of the Act are to be based upon an area's ''air quality as of the attainment date.'' Section 188(b)(2) is consistent with this requirement. Generally, EPA will determine whether an area's air quality is meeting the PM–10 NAAQS for purposes of section 179(c)(1) and 188(b)(2) based upon data gathered at established State and Local Air Monitoring Stations (SLAMS) in the nonattainment area and entered into the Aerometric Information Retrieval System (AIRS). Data entered into the AIRS has been determined by EPA to meet federal monitoring requirements (see 40 CFR 50.6 and appendix J, 40 CFR part 53, 40 CFR part 58, appendix A & B) and may be used to determine the attainment status of areas. EPA will also consider air quality data from other air monitoring stations in the nonattainment area provided that it meets the federal monitoring requirements for SLAMS. All data will be reviewed to determine the area's air quality status in accordance with EPA guidance at 40 CFR part 50, appendix K.

Attainment of the annual PM–10 standard is achieved when the annual arithmetic mean of four valid quarterly averages of the PM–10 concentration over a three-year period (1992, 1993 and 1994 for areas with a December 31, 1994 attainment date) is equal to or less than 50 micrograms per cubic meter ($\mu g/m^3$). Attainment of the 24-hour standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 $\mu g/m^3$. The 24-hour standard is attained when the expected number of days with levels above 150 $\mu g/m^3$ (averaged over a three-year period) is less than or equal to one (1.0). Three consecutive years of air quality data is generally necessary to show attainment of the annual and 24-hour standard for PM–10. See 40 CFR part 50 and appendix K.

C. Reclassification to Serious

A PM–10 nonattainment area may be reclassified from ''moderate'' to ''serious,'' which imposes new air quality planning obligations, in one of two ways. First, EPA has general discretion to reclassify a moderate PM–10 area to serious if at any time EPA determines the area cannot practicably attain the PM–10 standard by the applicable attainment date. See Section 188(b)(1). EPA bases its decisions to reclassify an area as serious before the attainment date on special facts or circumstances related to the affected nonattainment area which demonstrate that the area cannot practicably attain the standard by the applicable attainment date.

Second, under section 188(b)(2) of the Act, a moderate area will be reclassified as serious by operation of law if EPA finds that the area is not in attainment by the applicable attainment date. Pursuant to section 188(b)(2)(B) of the Act, EPA must publish a **Federal Register** notice within six months after the applicable attainment date identifying those areas which have failed to attain the standard and are reclassified to serious by operation of law. See Section 188(b)(2); see also Section 179(c)(1).

D. Extension of the Attainment Date

The Act provides the Administrator with the discretion to grant a one-year extension of the attainment date for a moderate PM–10 nonattainment area, provided certain criteria are met. See Section 188(d). If an area does not have the necessary number of consecutive years of clean air quality data to show attainment of the NAAQS, a State may apply for up to two one-year extensions of the attainment date for that area. The statute sets forth two criteria a moderate nonattainment area must satisfy in order to obtain an extension: (1) The State has complied with all the requirements and commitments pertaining to the area in the applicable implementation plan; and (2) the area had no more than one exceedance of the 24-hour PM–10 standard in the year preceding the extension year, and the annual mean concentration of PM–10 in the area for the year preceding the extension year is less than or equal to the standard. See Section 188(d).

The authority delegated to the Administrator to extend attainment dates for moderate PM–10 nonattainment areas is discretionary: Section 188(d) of the Act provides that the Administrator ''may'' extend the attainment date for areas that meet the minimum requirements specified above. The provision does not dictate or compel that EPA grant extensions to such areas even if these conditions are met.

In exercising this discretionary authority for PM–10 nonattainment areas, EPA examines, in addition to the two statutory criteria discussed above, the air quality planning progress made in the moderate area. See November 14, 1994 Memorandum from Sally L. Shaver, Director, Air Quality Strategies and Standards Division entitled ''Criteria for Granting 1-Year Extensions of Moderate PM–10 Nonattainment Area Attainment Dates, Making Attainment Determinations, and Reporting on Quantitative Milestones.'' EPA is disinclined to grant an attainment date extension unless a State has, in substantial part, addressed its moderate PM–10 nonattainment area planning obligations. In order to determine whether the State has substantially met these planning requirements, EPA reviews the State's application for the attainment date extension to determine whether the State has: (1) Adopted and substantially implemented control measures that represent RACM/RACT in the moderate nonattainment area; and (2) demonstrated that the area has made emission reductions amounting to reasonable further progress (RFP) toward attainment of the PM–10 NAAQS as defined in section 171(1) of the Act. RFP for PM–10 nonattainment areas is defined in section 171(1) of the Act as annual incremental emission reductions to ensure attainment of the applicable NAAQS (PM–10) by the applicable attainment date.

If the State does not have the requisite number of years of clean air quality data to show attainment and does not apply or qualify for an attainment date extension, the area will be reclassified to serious by operation of law under section 188(b)(2) of the Act. If an extension of the attainment date is granted, at the end of the extension year EPA will again determine whether the area has attained the PM–10 NAAQS. If the requisite three consecutive years of clean air quality data needed to determine attainment are not met for the area, the State may apply for a second one-year extension of the attainment date. In order to qualify for the second one-year extension of the attainment date, the State must satisfy the same requirements listed above for the first extension. In addition, EPA will consider the State's PM–10 planning progress for the area during the year for which the first extension was granted. If a second extension is granted and the area does not have the requisite three consecutive years of clean air quality data needed to demonstrate attainment at the end of the second extension, no further extensions of the attainment date can be granted and the area will be

reclassified serious by operation of law. See Section 188(d).

II. Summary of EPA's Proposed Action

Today's action announces EPA's determination that the Power-Bannock Counties PM–10 nonattainment area and the Sandpoint PM–10 nonattainment area have each failed to attain the PM–10 NAAQS by the applicable attainment date of December 31, 1994. This determination is based upon air quality data which show there were violations of the PM–10 NAAQS during the period from 1992 to 1994.

The State of Idaho has requested a one-year extension of the PM–10 attainment date for both the Power-Bannock Counties PM–10 nonattainment area and the Sandpoint PM–10 nonattainment area. EPA has reviewed the extension requests and is, with this notice, proposing to grant a one-year extension of the attainment date for each area. This determination is based upon available air quality data and a review of the State's progress in implementing the planning requirements that apply to moderate PM–10 nonattainment areas.

A. Power-Bannock Counties PM–10 Nonattainment Area

The Power-Bannock Counties PM–10 nonattainment area is comprised of State lands within portions of both Power and Bannock Counties and both trust and fee lands within a portion of the exterior boundaries of the Fort Hall Indian Reservation. The State of Idaho operates four PM–10 SLAMS monitoring sites in the nonattainment area, all of which are on State lands. Data from these State sites have been deemed valid by EPA and have been submitted by the State of Idaho for inclusion in the AIRS network.

1. Air Quality Data

Whether an area has attained the PM–10 NAAQS is based exclusively upon measured air quality levels over the most recent and complete three calendar year period. See 40 CFR part 50 and appendix K. For areas with an attainment date of December 31, 1994, this three-year period covers calendar years 1992, 1993 and 1994. Data from calendar year 1994 is also used in determining whether an area with a December 31, 1994 attainment date meets the air quality criteria for granting a one-year extension to the attainment date under section 188(d).

A review of the data reported for the SLAMS sites in the Power-Bannock Counties PM–10 nonattainment area for the calendar years 1992, 1993 and 1994 shows no violations of the annual PM–10 standard at any of the sites. Measured PM–10 concentrations above the level of the 24-hour NAAQS were recorded at two SLAMS monitoring sites on January 7, 1993. As a result of the State's sampling frequency of one in every six day, the expected number of exceedances for the 1993 calendar year at the SLAMS sites is 6.0 at one site and 6.2 at the second (calculated in accordance with appendix K). No measured values above the level of the 24-hour NAAQS were reported in 1992 or 1994. Therefore, the three-year average (1992, 1993 and 1994) expected exceedance rate of the 24-hour standard at the SLAMS sites is 2.0 and 2.3 respectively, (calculated in accordance with appendix K).

Private industry in the Power-Bannock Counties PM–10 nonattainment area funded and operated a seven-station monitoring network in and near a portion of the nonattainment area known as the ''industrial complex'' for one year, from October 1, 1993 through September 30, 1994 (referred to as the ''EMF network''). EPA has determined the data from this network are valid. There were no reported 24-hour concentrations above the level of the 24-hour NAAQS during the year the network was in operation. EMF Site #2, which is located at the site in the nonattainment area predicted to have the maximum industrial air quality impact, is located immediately adjacent to the industrial complex on State lands, adjacent to the Reservation boundary. EMF Site #2 reported an annual concentration greater than the 50 $\mu g/m^3$ level of the annual PM–10 standard for the one-year period the network was in operation. EMF Site #2 also reported several 24 hour PM–10 concentrations at or near the level of the 24-hour PM–10 NAAQS.

2. Attainment of the PM–10 NAAQS

The Power-Bannock Counties PM–10 nonattainment area does not attain the 24-hour PM–10 NAAQS. The PM–10 concentrations reported at two SLAMS monitoring stations on January 7, 1993, exceeded the level of the NAAQS. Because of the sampling frequency (one in every six days), the expected exceedance rate for the three-year period from 1992 through 1994 at two sites is greater than one (1.0) which represents a violation of the 24-hour NAAQS.

3. Extension of Attainment Date

EPA is action proposing to grant the State's request for a one-year extension of the attainment date, from December 31, 1994 to December 31, 1995, for the Power-Bannock Counties PM–10 nonattainment area.

a. *Compliance with Applicable SIP.* Based on information available to EPA, EPA believes that the State of Idaho is in compliance with all requirements and commitments in the applicable implementation plan that pertain to the Power-Bannock Counties PM–10 nonattainment area. EPA provides oversight of the Idaho air program, including implementation of the Idaho State Implementation Plan (SIP). EPA conducts annual oversight inspections of sources throughout the State of Idaho. Results from these inspections indicate that the State is meeting the requirements and commitments of the statewide SIP. Although the State has submitted its moderate PM–10 nonattainment plan for the Power-Bannock Counties nonattainment area as a SIP revision, EPA has not yet taken action on that plan. Therefore, this plan is not yet an ''applicable implementation plan'' for the Power-Bannock Counties PM–10 nonattainment area. For further discussion of the State's compliance with the applicable SIP, please refer to the Technical Support Document.

b. *Air Quality Data.* As discussed above, there were no measured levels above the 24-hour NAAQS at any of the SLAMS monitoring sites or any of the EMF monitoring sites during calendar year 1994. In addition, the annual mean concentration of PM–10 at each of the SLAMS monitoring sites during calendar year 1994 was below the level of the annual NAAQS.

As discussed above, however, EMF Site #2 recorded an annual average above the annual standard for the one-year period from October 1, 1993 to September 30, 1994. EPA believes that the recorded PM–10 levels at several of the monitoring sites in the EMF network, particularly EMF Site #2, indicate that air quality problems continue in the Power-Bannock Counties PM–10 nonattainment area and that additional controls will likely be necessary to bring the area into attainment. EPA does not believe, however, that the data recorded at EMF Site #2 precludes EPA from granting the State's request for a one-year extension of the attainment date under section 188(d) of the Act. The EMF monitoring network did not collect a year's worth of data in calendar year 1994. Appendix K of 40 CFR part 50 specifies the data requirements that apply in determining an area's attainment status and provides methods for filling gaps in data. EPA believes that these same data requirements should be applied in determining the annual mean

concentration of PM–10 in connection with an extension request under section 188(d) of the Act. Even after applying the appendix K ''gap-filling'' techniques for the reported data from EMF Site #2 for the missing quarter of data in 1994, the question of whether the annual mean concentration is above the level of the annual standard during 1994 remains ambiguous. In other words, the data does not conclusively show a violation of the annual standard during calendar year 1994. Accordingly, EPA does not believe that the PM–10 concentrations recorded at EMF Site #2 preclude EPA from exercising its discretion to grant the State's request for a one-year extension of the attainment date. Please refer to the Technical Support Document for further analysis of the EMF data.

c. *Substantial Implementation of Control Measures*. The State of Idaho, along with several local agencies, has developed and implemented several significant control measures on sources located on State lands within the Power-Bannock Counties PM–10 nonattainment area. The State submitted these control measures to EPA as a SIP revision in May 1993 and in supplemental submittals since that time. These measures consist of a comprehensive residential wood combustion program, including a mandatory woodstove curtailment program; stringent controls on fugitive road dust, including controls on winter road sanding and a limited unpaved road paving program; and operating permits that represent RACT for J.R. Simplot's facility in the industrial complex and Ashgrove Cement's facility near Inkom, the only two major stationary sources of PM–10 on State lands in the nonattainment area. EPA has conducted a preliminary review of these measures and believes that they substantially meet EPA's guidance for RACM, including RACT, for sources of primary particulate for purposes of an extension under section 188(d).

After the State submitted its moderate area SIP in May 1993, the State learned that PM–10 precursors contribute significantly to wintertime violations of the PM–10 standard in the area. In cooperation with the Tribes and EPA, the State developed a work plan for developing an emission inventory of sources of PM–10 precursors in the nonattainment area and controls for such sources. The State is moving forward on this precursor plan and expects to have controls in place on major stationary sources of PM–10 precursors by March 1997. EPA believes that the State's schedule for addressing the contribution of precursors is expeditious and that the State is making progress on the workplan. Because the contribution of precursors came to light only late in the planning process, EPA does not believe that the State's failure to have actually adopted or implemented controls on sources of PM–10 precursors on State lands within the nonattainment area is grounds, in and of itself, for denying the State's request for a one-year extension.

With respect to PM–10 sources located on Tribal lands within the nonattainment area, a gap in planning responsibilities for these sources currently exists. In developing its control strategy, the State did not seek to impose controls on any sources located within the Reservation portion of the nonattainment area or attempt to demonstrate to EPA that it had the authority to issue and enforce such controls on Reservation sources. As EPA has previously stated, EPA does not believe a Clean Air Act program submitted by a State should be disapproved because it fails to address air resources within the exterior boundaries of an Indian Reservation. See 59 FR 43956, 43982 (August 25, 1994) (proposed rule implementing section 301(d)).

Nor does EPA currently have the authority to recognize as federally enforceable controls that the Shoshone-Bannock Tribes have imposed or could impose on PM–10 sources located on Reservation lands within the nonattainment area. Although the Clean Air Act Amendments of 1990 greatly expanded the role of Indian Tribes in implementing the provisions of the Clean Air Act on Reservation lands, EPA has not yet issued the final rules necessary for EPA to recognize Tribal air programs as federally enforceable. See Section 301(d); 59 FR 43956.

EPA is currently working on a proposed rule imposing controls on sources of PM–10 on the Tribal portion of the nonattainment area. EPA believes it would be unfair to burden the State and the Pocatello area with new serious nonattainment area planning requirements because of the gap in the planning process and the resulting lack of federally-enforceable controls on Tribal sources at this time. Accordingly, EPA believes that the State has adequately demonstrated, for purposes of an extension under section 188(d) of the Act, that it has adopted and substantially implemented control measures representing RACT/RACM in the nonattainment area.

d. *Emission Reduction Progress*. On March 30, 1995, the State of Idaho submitted to EPA the milestone report as required by section 189(c)(2) of the Act to demonstrate annual incremental emission reductions and reasonable further progress. In that report, the State discusses implementation of the control measures adopted as part of the control strategy in the SIP and the emission reductions that have been achieved as a result of the State's control strategy. Implementation of these control measures represents a reduction in annual allowable emissions in the nonattainment area of 1439.63 tons per year from point sources.

The effect of the area source control measures on air quality is reflected in the reported ambient measurements at the SLAMS monitoring sites, most of which have been operating for more than seven years. Data from these sites show no violations of the 24-hour standard attributable to primary particulate since 1992 and that the expected exceedance rate has decreased at all sites, with the exception of the January 1993 violations which are attributable to secondary aerosol. The annual average concentrations have likewise shown a downward trend from a maximum of 51 ug/m^3 at the STP site in 1990 to 34.5 ug/m^3 at the STP site in 1994. This trend is further evidence that the State's implementation of control measures on sources of primary particulate on State lands has resulted in emission reductions amounting to reasonable further progress in the Power-Bannock Counties PM–10 nonattainment area.

In summary, EPA proposes to grant the State's request for a one-year extension of the attainment date, from December 31, 1994 to December 31, 1995, for the Power-Bannock Counties PM–10 nonattainment area. In doing so, EPA emphasizes that the authority to grant an extension of the attainment date under section 188(d) is discretionary and that EPA might, under other circumstances, be disinclined to grant an extension for an area with similar air quality data. In particular, EPA notes that the data collected from certain monitors in the EMF network indicate that air quality problems remain and must still be addressed in the Power-Bannock Counties PM–10 nonattainment area. EPA believes, however, that the high 24-hour and annual PM–10 levels recorded at some of the EMF monitors are primarily attributable to the gap in planning responsibility for the Tribal portion of the nonattainment area. Because of the unique jurisdictional issues related to this particular nonattainment area, the fact that the area technically meets the data requirements for an extension and the fact that the State has demonstrated that it has adopted and substantially

implemented control measures on sources of primary particulate on State lands resulting in emission reductions amounting to reasonable further progress, EPA proposes to exercise its discretion to grant the Power-Bannock Counties nonattainment area a one-year extension of the attainment date.

B. Sandpoint PM–10 Nonattainment Area

The Sandpoint PM–10 nonattainment area includes the Cities of Sandpoint, Kootenai and Ponderay and is located in the northern part of the Idaho panhandle.

1. Air Quality Data

The Sandpoint nonattainment area has one PM–10 monitoring site at the Post Office building in downtown Sandpoint. This SLAMS site was established in 1986. Sampling frequencies vary seasonally, with one sample every other day during the winter (October 1 through March 31), and one sample every six days during the rest of the year. Data from this site has been deemed valid by EPA and submitted by the State of Idaho for inclusion in the AIRS system.

A review of the data for calendar years 1992, 1993 and 1994 shows no violations of the annual PM–10 standard in the Sandpoint PM–10 nonattainment area. During this same three-year period, there were three reported measurements above the level of the 24-hour NAAQS. In calendar year 1992 there was one level above the NAAQS in the first quarter (during every other day sampling) and one in the third quarter (during one in every six day sampling). There were no measured levels above the 24-hour NAAQS in calendar year 1993. In calendar year 1994, there was one measurement above the 24-hour NAAQS in the first quarter during every other day sampling.

2. Attainment of the PM–10 NAAQS

The Sandpoint PM–10 nonattainment area does not attain the 24-hour PM–10 NAAQS. PM–10 concentrations reported from the SLAMS monitoring station at the Post Office exceeded the level of the NAAQS three times from 1992 to 1994. Because of the sampling frequency, the expected exceedance rate for this three-year period is 3.5 (calculated in accordance with appendix K), which represents a violation of the 24-hour standard.

3. Extension of Attainment Date

EPA is by this action proposing to grant the State's request for a one-year extension of the attainment date, from December 31, 1994 to December 31, 1995, for the Sandpoint PM–10 nonattainment area.

a. *Compliance with Applicable SIP.* Based on information available to EPA, EPA believes the State of Idaho is in compliance with all requirements and commitments in the applicable implementation plan that pertains to the Sandpoint PM–10 nonattainment area. As discussed above, EPA believes that the State is meeting the requirements and commitments of the statewide SIP. Although the State has submitted its moderate PM–10 nonattainment area plan as a SIP revision, EPA has not yet taken action on that plan. Therefore, the submitted plan is not yet an ''applicable implementation plan'' for the Sandpoint PM–10 nonattainment area.

b. *Air Quality Data.* As discussed above, there was one measured level above the 24-hour NAAQS during calendar year 1994. The annual mean concentration of PM–10 was 37 $\mu g/m^3$ during 1994, well below the standard. Therefore, the Sandpoint PM–10 nonattainment area meets the extension criteria of no more than one exceedance of the 24-hour NAAQS and an annual mean concentration less than or equal to the standard for the year preceding the extension year.

c. *Substantial Implementation of Control Measures.* The State of Idaho, along with several local agencies, has developed and implemented several significant control measures on sources within the Sandpoint PM–10 nonattainment area. The State submitted these control measures to EPA as a SIP revision on May 18, 1993, and in supplemental submissions since that time. These measures consist of a comprehensive residential wood combustion program, including a mandatory woodstove curtailment program; stringent controls on fugitive road dust, including controls on winter road sanding and a limited unpaved road paving program; and new or revised operating permits for the four major point sources in the nonattainment area, Lake Pre-Mix, L.D. McFarland Co., Interstate Concrete and Asphalt, and Louisiana-Pacific Corporation. EPA has conducted a preliminary review of these measures and believes that they substantially meet EPA's guidance for RACM, including RACT for purposes of granting an extension under section 188(d) of the Act.

d. *Emission Reduction Progress.* On March 30, 1995, the State of Idaho submitted to EPA the milestone report required by section 189(c)(2) of the Act to demonstrate annual incremental emission reductions and reasonable further progress in the Sandpoint area. In that report, the State discusses implementation of the control measures adopted as part of the control strategy in the SIP and the emission reductions that have been achieved as a result of the State's control strategy. EPA believes that the reductions in allowable emissions for the industrial sources demonstrates reasonable further progress in the Sandpoint nonattainment area.

In summary, for the reasons discussed above, EPA proposes to grant the State's request for a one-year extension of the attainment date for the Sandpoint PM–10 nonattainment area from December 31, 1994 to December 31, 1995.

III. Requests for Public Comments

EPA is requesting comments on all aspects of today's proposal. As indicated at the outset of this notice, EPA will consider any comments received by September 27, 1995.

IV. Administrative Review

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

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule 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.''

The Agency has determined that the determinations of nonattainment and attainment date extensions proposed today would result in none of the effects identified in section 3(f). Under section 188(b)(2), findings of nonattainment are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in and of themselves,

impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, the nonattainment determinations and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities. In addition, attainment date extensions under section 188(d) of the CAA do not impose any new requirements on any sectors of the economy; nor do they result in a materially adverse impact on State, local, or tribal governments or communities.

Determinations of nonattainment areas under section 188(b)(2) of the CAA and extensions under section 188(d) of the CAA do not create any new requirements. Therefore, because these actions do not impose any new requirements, I certify that it does not have a significant impact on small entities.

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

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

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

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

This action has been classified as a Table 3 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 a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 10, 1995.

Charles Findley,

Acting Regional Administrator.

[FR Doc. 95–21277 Filed 8–25–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229

[FRA Docket No. RSGC–2, Notice No. 8]

RIN 2130–AA80

Locomotive Visibility; Minimum Standards for Auxiliary Lights

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes to amend the locomotive safety standards to increase train visibility. This action requires that certain locomotives be equipped with auxiliary lights to enable motorists, railroad employees and pedestrians to recognize approaching trains at a greater distance. The proposed rule would require that locomotives operated over public highway-rail crossings at greater speeds than 20 miles per hour be equipped with auxiliary lights.

DATES: *Written comments.* Comments must be received by October 27, 1995. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

Public hearing. If requested by September 27, 1995, FRA will schedule a public hearing to receive oral comments from any interested party.

ADDRESSES: *Written comments.* Comments should identify the docket and notice numbers, and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8201, Washington, D.C. 20590. Parties who want notice that FRA has received their comments should include a stamped, self-addressed postcard with their filing. The Docket Clerk will indicate on the postcard the date of receipt and will return the card to the addressee. Written comments will be available for examination before and after the closing date for comments during regular business hours at the above address.

Public hearing. FRA will hold a public hearing on this proposed rule if requested by a party to this rulemaking.

FOR FURTHER INFORMATION CONTACT: Gordon Davids, Bridge Engineer, Office of Safety, FRA, 400 Seventh Street SW., Washington, D.C. 20590 (telephone: 202–366–9186); Grady Cothen, Jr., Deputy Associate Administrator for Safety Standards, FRA, 400 Seventh Street SW., Washington, D.C. 20590 (telephone: 202–366–0897); or Kyle M. Mulhall, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: 202–366–0635).

SUPPLEMENTARY INFORMATION: On February 3, 1993, FRA published an interim rule (58 FR 6899, codified at 49 C.F.R. 229.133), with request for comments, concerning measures to enhance the visibility of locomotives. The interim rule implemented mandates of section 14 of the Amtrak Authorization and Development Act (Pub. L. 102–533). This enabling legislation added a new subsection (u) to § 202 of the Federal Railroad Safety Act of 1970 (FRSA) [45 U.S.C. 431(u)], to address locomotive visibility. On July 5, 1994, § 202(u) of the FRSA, together with all the other general and permanent Federal railroad safety laws, was simultaneously repealed, revised and reenacted without substantive change, and recodified as positive law at 49 U.S.C. 20143. As recodified, the section now reads as follows:

Locomotive Visibility

(a) *Definition.*—In this section, ''locomotive visibility'' means the enhancement of day and night visibility of the front end unit of a train,

considering in particular the visibility and perspective of a driver of a motor vehicle at a grade crossing.

(b) *Interim Regulations.*—Not later than December 31, 1992, the Secretary of Transportation shall prescribe temporary regulations identifying ditch, crossing, strobe, and oscillating lights as temporary locomotive visibility measures and authorizing and encouraging the installation and use of those lights. Subchapter II of chapter 5 of title 5 does not apply to a temporary regulation or to an amendment to a temporary regulation.

(c) *Review of Regulations.*—The Secretary shall review the Secretary's regulations on locomotive visibility. Not later than December 31, 1993, the Secretary shall complete the current research of the Department of Transportation on locomotive visibility. In conducting the review, the Secretary shall collect relevant information from operational experience by rail carriers using enhanced visibility measures.

(d) *Regulatory Proceeding.*—Not later than June 30, 1994, the Secretary shall begin a regulatory proceeding to prescribe final regulations requiring substantially enhanced locomotive visibility measures. In the proceeding, the Secretary shall consider at least—

(1) Revisions to the existing locomotive headlight standards, including standards for placement and intensity;

(2) Requiring the use of reflective material to enhance locomotive visibility;

(3) Requiring the use of additional alerting lights, including ditch, crossing, strobe, and oscillating lights;

(4) Requiring the use of auxiliary lights to enhance locomotive visibility when viewed from the side;

(5) The effect of an enhanced visibility measure on the vision, health, and safety of train crew members; and

(6) Separate standards for self-propelled, push-pull, and multi-unit passenger operations without a dedicated head end locomotive.

(e) *Final Regulations.*—(1) Not later than June 30, 1995, the Secretary shall prescribe final regulations requiring enhanced locomotive visibility measures. The Secretary shall require that not later than December 31, 1997, a locomotive not excluded from the regulations be equipped with temporary visibility measures under subsection (b) of this section or the visibility measures the final regulations require.

(2) In prescribing regulations under paragraph (1) of this subsection, the Secretary may exclude a category of trains or rail operations from a specific visibility requirement if the Secretary decides the exclusion is in the public interest and is consistent with rail safety, including grade-crossing safety.

(3) A locomotive equipped with temporary visibility measures prescribed under subsection (b) of this section when final regulations are prescribed under paragraph (1) of this subsection is deemed to be complying with the final regulations for 4 years after the final regulations are prescribed.

The interim rule was revised in response to comments and published on May 13, 1994 (59 FR 24960). The revision broadened the permissible dimensions for placement of ditch lights, crossing lights and strobe lights, and broadened and redefined the range of frequencies for flashing lights.

The interim rules designate ditch lights, crossing lights, strobe lights and oscillating lights as interim locomotive visibility measures. All locomotives not excluded from the final regulations must be equipped by December 31, 1997, with either the interim visibility lighting arrangements or the arrangements mandated by the final regulation. Locomotives that comply with the interim rule or its amendments are deemed to comply with any final rule for four years after the final rule's issuance.

FRA Study of Auxiliary Lights

FRA's Office of Research and Development, through the Volpe National Transportation Systems Center, has studied the impact of auxiliary lights as alerting devices to improve locomotive visibility. A copy of the final report will be placed in the docket of this rulemaking.

As part of this study, FRA initially evaluated various lighting systems, paint schemes, and reflective materials. Four of the alerting light systems were selected for further study: standard locomotive headlights and crossing, ditch, and strobe lights. FRA evaluated the lights for compliance with FRA's interim advisory standards, cost and reliability, and conducted field tests on their ability to increase an approaching train's visibility.

Preliminary results are showing that the addition of auxiliary lights significantly increases train visibility compared to use of standard headlights alone. Results indicate a 10 to 20 percent increase in the distance an approaching train can be recognized. Tests also suggest that motorists are better able to predict the time it takes for an approaching train to enter a crossing. Limited data collected from three railroads participating in the study suggest that accident rates drop significantly when auxiliary lights are used. Further, the research provides clues that appear helpful in distinguishing among candidate auxiliary lights. These findings are further discussed below.

After review, FRA has found no basis for changing current requirements for placement and intensity of locomotive headlights. The headlight serves its purpose without blinding other people approaching the right-of-way. As discussed below, when augmented by auxiliary alerting lights, the headlight becomes a part of the unique light triangle that will make approaching trains more recognizable to motorists.

FRA is continuing to review the use of auxiliary lights to enhance side visibility of locomotives. Displaying a distinct pattern is key to making the side of a locomotive more readily recognizable in the dark. Use of retro-reflective materials (further discussed below) appears to be the most promising approach to increasing the visibility of the sides of rail equipment.

Section Analysis

1. Three-Light Triangle: § 229.125(d)

FRA believes that a uniform light configuration on locomotives will help the public become familiar with and quickly recognize the appearance of an approaching locomotive. A configuration of three front-mounted lights (defined in the interim rule, together with the headlight, as ''ditch lights'' or ''crossing lights'') is the most common system adopted by the railroad industry since the issuance of the first interim rule in 1993. Those three lights form a triangle with one major dimension (base or vertical axis) of at least 60 inches.

The normal human eye can discern two objects as separate when the objects are spaced to form a visual angle of approximately one-half of one degree. When the lights are seen as separate, the observer can better estimate the speed of an approaching train because as the locomotive moves closer the lights will appear to move further apart. A space of 60 inches between lights causes the lights to appear separate at 572 feet from the observer. Beyond 572 feet the lights are commonly seen as one. This distance corresponds to an approach time of 13 seconds for a train moving at 30 miles per hour, or 6.5 seconds for a train moving at 60 miles per hour.

Given the prevalence and practicality of the three-light triangle system, the desire for a uniform appearance of an approaching locomotive, and the physical advantages of this system, FRA believes it to be the best lighting system to accomplish the purpose of this rule.

The dimensions proposed for the three-light triangle are the same as those specified in the interim rule as revised on May 13, 1994. Those dimensions were prescribed as the result of comments made on the first interim rule of February 3, 1993. They are functionally the same, but the second interim rule permits more flexibility in light placement on locomotives to accommodate various locomotive configurations and placement of other vital appliances.

Since the second interim rule was issued, FRA has received no negative comments and no indication of problems with the prescribed light placement. If any problems have arisen with these prescribed dimensions, FRA would be most interested in knowing the nature of the problem, and any suggested alternatives that would maintain the effectiveness of visibility devices.

The 36-inch minimum height requirement will permit maintenance of the 60-inch vertical dimension on locomotives with the headlight mounted in a low front hood. This height requirement also aids the observer's sight distance. The maximum vertical curve recommended by the American Railway Engineering Association for main track has a rate of change of grade of 0.2 percent per 100 feet. On this vertical curve, a light three feet above the track will be visible to an observer at a distance of 1,095 feet, provided the observer's eyes are three feet above the track. A reduction in height of one foot, of either the observer or the light, reduces the sight distance by approximately 100 feet.

One comment to the first interim rule requested a lower height above the rail for lights on cab control cars in suburban passenger service. FRA believes that an inflexible requirement to place lights on cab control cars or other multiple unit locomotives as defined in this regulation at a height of 36 inches might lead to a reduction in the integrity of the car body structure at this critical location. Such reduced structural integrity could increase the risk of injury to the occupants of the equipment in the event of an accident. The proposed final rule would therefore permit auxiliary lights to be mounted at heights down to 24 inches above the rail on equipment that would not readily accommodate a higher placement.

However, the lower, 24-inch minimum height for multiple unit locomotives and cab control cars is not suitable for general railroad service, owing to the reduced visibility on vertical curves, and susceptibility to damage from snow and foreign material away from commuter lines. FRA therefore believes that the minimum height of 36 inches for auxiliary lights should be retained for all other applications.

Horizontal orientation of the auxiliary lights should also be reasonably uniform in order to ensure recognition. FRA has selected the ''crossing light'' configuration (focused within plus or minus 15 degrees of a line parallel to the centerline of the locomotive) in lieu of the extreme ''ditch light'' configuration as described in the grandfathering rule (turned outward up to 45 degrees). In the extreme ditch light configuration, there appears to be a risk that the auxiliary lights might affect the night vision of motorists on parallel roadways.

Research on locomotive conspicuity has noted that the alerting lights meeting the criteria of the interim rule are considerably higher in effective candela than lights used for similar purposes in aviation and marine service. In addition, it was noted that a ditch light application with the lights aligned outwardly might produce glare affecting motorist vision. Presumably in light of similar considerations, railroads applying auxiliary alerting lights have generally opted for alignment directly down the railroad or inward alignment at about 1 degree (''crosseyed''). FRA specifically requests comment as to whether the final rule should contain more severe restrictions than the 15-degree latitude provided in the interim rule and this notice.

FRA also requests comment as to whether a dimmer feature should be required for auxiliary lights similar to the dimmer used on headlights, the minimum and/or maximum candela that should result, and, if a dimmer is required, when use of the feature might be warranted. In addition, FRA requests comment as to whether a maximum luminous intensity should be specified for auxiliary alerting lights.

The interim rule and the proposed rule provide a minimum intensity requirement of 200,000 candela for each auxiliary light. The criterion assumes steady-state operation. Field observations suggest that current alerting light pulsing systems provide more than adequate effective candela; however, research conducted to date evaluated only strobe lights for effective intensity in a pulsing or flashing mode. Should a separate effective intensity requirement be stated in the final rule for systems operating in the pulse mode? If so, what are the appropropriate standard and test procedure?

FRA proposes to permit use of either the steady-state or pulsing auxiliary lights, drawing permissible features from both the ''ditch lights'' and ''crossing lights'' as described in the interim requirements.

It should be noted that nomenclature for auxiliary lights is not standard. For example, most non-pulsing installations referred to by railroads as ''ditch lights'' have, in practice, been aligned within 15 degrees of centerline and would therefore meet FRA's proposed requirements for permanent auxiliary lights. This proposed rule does not elect a single option from among the configurations that railroads continue to evaluate. Rather, it proposes a minimum standardization of placement and alignment of the two auxiliary lights that, with the locomotive headlight, form the distinct triangle.

FRA has considered the use of oscillating lights and strobe lights for inclusion in this section. Both light systems offer significant advantages but have unique drawbacks. An oscillating light can provide a startling effect when the light rapidly reflects off nearby objects, fog, or snow. However, in general, oscillating lights are costly and difficult to maintain. Oscillating lights have often been used individually, a configuration inconsistent with the triangular signature common in European rail.

Desirable effects can also be achieved with pulsating strobe lights, particularly those lights operated in pairs. However, extensive use of strobe and oscillating-type lights on emergency vehicles has reduced their usefulness as a distinct warning of an approaching train. Further, strobe lights can tend to wash out against a light background and may not compete well for attention in a nighttime environment with a variety of light sources.

Research in support of this proceeding indicates that crossing lights and ditch lights—the auxiliary lights most widely used by U.S. railroads—also appear to perform well under both experimental conditions and in revenue service. Experimental field tests compared the performance of a lone headlight with combinations of a headlight and each of the following: (i) pulsing ''crossing lights'' that were aligned straight down the railroad, (ii) steady burning ''ditch lights'' that were outwardly aligned at 15 degrees, and (iii) dual strobe lights mounted on the top of the locomotive. All three types of auxiliary lights outperformed the lone headlight by significantly increasing the distance a train can be detected and improving an observer's ability to estimate a train's arrival time at the crossing. For detection distance, the crossing light performed best, followed

by the ditch and strobe lights. With respect to estimation of time of arrival, the crossing lights were judged to result in the smallest estimation errors for actual arrival time intervals between 7 and 22 seconds. However, the ditch lights clearly aided estimation of arrival, as well.[1]

The Volpe Center gathered limited data from Norfolk Southern, Conrail, and CalTrans (California) comparing accident experience of locomotives equipped with crossing lights to locomotives equipped with a headlight alone. These data suggest that the use of crossing lights may result in a greater than 50-percent reduction in accident rates. Although these trials lasted from only nine to twenty-four months, and some of the accident reduction may have resulted from a ''novelty effect'' (an initial impact that wanes as risk-taking motorists become accustomed to the new lights), there is no reason to believe that there will not be substantial and continuing benefits from use of auxiliary lights.

All of the service applications examined by the Volpe Center involved pulsing auxiliary lights, and the experimental field tests potentially relevant to this issue involved a confounding variable (angle of alignment). Accordingly, no empirically-based comparisons can be made at this time between lights that pulse (alternately flash) on approach to a crossing and those that burn steadily. Yet FRA is required to issue a rule that would require that by December 31, 1997, locomotives be equipped with a form of auxiliary lights. In order to develop additional information that may later provide a basis for distinguishing between steady burning and alternately pulsing arrangements, FRA has requested that Association of American Railroads (AAR) conduct a further study under which two or more major railroads would equip portions of their fleets used in the same service with steady and pulsing lights. In order to eliminate transient effects, the study would follow the two matched fleets for a period of approximately three years. The progress of this study will be tracked on an annual basis, and at the conclusion of the study, FRA will review the data to determine if a statistically significant difference can be discerned between the effectiveness of steady and flashing lights. The results of the study should provide a factual basis for determining whether further refinement of the rule is appropriate and, if so, the degree of urgency associated with any such change.

2. Flash Rates: § 229.125(e)

Subsection (e) provides that auxiliary lights may be illumined continuously or may be arranged to flash on approach to a highway-rail grade crossing. If flashing lights are used, the rate must be not fewer than 40 and not more than 180 per minute, as provided in the second interim rule. FRA has received no negative comments regarding the range of flash rates permitted for locomotive visibility lights in the second interim rule. The rates are constrained by the need for visibility but also the need to avoid a ''flicker vertigo'' effect on train crew members.

FRA proposes to leave control of flashing lights to the discretion of the railroad. Depending on their operations, some railroads might consider it advisable to interconnect the horn and lighting controls to provide joint activation when approaching a crossing, but that question probably need not be addressed in a regulation.

3. Operation of Auxiliary Lights: § 229.125(f)

Subsection (f) would require operation of auxiliary lights for a period of at least 20 seconds prior to arrival of the locomotive at the crossing. This is the same minimum period of warning utilized for automated warning systems at public highway-rail grade crossings (*see,* e.g., 49 CFR 234.225). Railroads using locomotives with flashing lights would not be required to flash the lights in all operations, but the auxiliary lights would be required to be illumined for at least 20 seconds prior to the arrival of the locomotive.

FRA specifically requests comment on whether allowance should be made for not illuminating auxiliary lights under certain circumstances for the safety of motorists, railroad employees working in the area, or others. FRA believes that any such exception should be sufficiently objective in nature to avoid controversy subsequent to a grade crossing accident regarding the appropriateness of the decision not to use the auxiliary lights.

4. Other Uses of Auxiliary Lights: § 229.125(g)

Subsection (g) authorizes use of auxiliary lights for operations at lower speeds over highway-rail grade crossings. Railroads are, in fact, utilizing auxiliary lights for lower-speed movements. However, circumstances may exist where use of the lights may affect night vision of people along the railroad, outweighing the limited value of the lights in preventing highway-rail grade crossing accidents in areas of low speed rail operations. The proposed rule authorizes use of auxiliary lights along the railroad between grade crossings. Auxiliary lights offer promise for gaining the attention of trespassers on rail rights-of-way who may be struck by trains. Although it can be strongly argued that the railroads owe no duty of care to these people, it can be hoped that the attention-getting light triangle may discourage trespassing.

FRA does not believe that requiring continuous operation of auxiliary lights should be mandated. Circumstances differ widely among railroad operating environments, and railroads require the flexibility to adopt policies adequately suited to these environments. Railroads may wish to extinguish auxiliary lights when the headlight is dimmed under existing operating rules. Rule 5.9 of the General Code of Operating Rules, for instance, requires that the headlight be dimmed at stations and yards where switching is done, when the engine is stopped close behind another engine, when passing another train, and under specified circumstances.

5. Defective en Route: § 229.125(h)

Subsection (h) permits a lead locomotive with one defective auxiliary light to proceed to a point where repairs can be made. FRA believes this is a reasonable accommodation, given the low risk of an accident at any given time and the ready availability of standard lamps at railroad facilities along the way. If both auxiliary lights are out, § 229.9 (movement of non-complying locomotives) would apply, which would ordinarily require that the locomotive be switched to a trailing position or be operated at less than 20 miles per hour. It should be noted that the requirement for auxiliary lights applies only to a lead locomotive.

6. Grandfathering: § 229.133

The interim provisions on auxiliary lights are contained in 49 CFR 229.133. Subsection (c), which makes use of auxiliary lights elective during the period prior to December 31, 1997, would be repealed on that date.

[1] In the field tests, observers wore headphones to mask noise from the oncoming locomotive. FRA has conducted separate analyses that indicate locomotive horns provide a very powerful (though not always sufficient) warning to motorists that the train is present and its arrival at the crossing is imminent. FRA recognizes that some overlap may exist between the two warning systems; however, to the extent this overlap may be beneficial in modifying risky behavior, its potential should be exploited. The actual service experience tends to confirm the possibility that such an effect may exist.

The interim provisions identify four alerting light arrangements that FRA believed would increase locomotive visibility. First, ditch lights, which are composed of two white lights focused within 45 degrees of the longitudinal centerline of the locomotive. Second, strobe lights, which are two white stroboscopic lights that flash at a rate between one pulse every 1.0 to 1.3 seconds. Third, crossing lights, which are two white standard lights that flash at the same rate as the strobes and are focused within 15 degrees of the longitudinal centerline of the locomotive. And the final alerting lights system, an oscillating light, which is composed of one white light that casts a moving beam in circular shapes in front of the locomotive. These alerting light systems will be ''grandfathered'' and considered in temporary compliance with any final rule.

By law, ''grandfathered'' auxiliary lights installed before the final rule is issued may continue in use for four years from the date the final rule is issued. FRA encourages early installation of auxiliary lights.

Related Issues

Other Light Systems

FRA believes that the public will soon become accustomed to the appearance of the triangular light pattern at the front of locomotives. The value of this standardization is increased if the triangle's base is uniform along the lower front portion of the locomotive, rather than the top (as with dual strobe light installations). The limited number of locomotives equipped exclusively with strobe lights or oscillating lights could eventually present a hazard to motorists and others who could draw false visual clues from the lack of a triangular light pattern. Nothing in this proposed rule would prohibit the use of such additional lights should the operating railroad so desire, but their use would not meet the requirements of the proposed rule.

Reflective Materials

The enabling legislation requires that the Secretary consider the use of reflective materials to enhance locomotive visibility. Research has shown that the frontal visibility of a locomotive displaying a headlight is not affected by reflective material or distinctive colors. The headlight is visible at a far greater distance than any light reflected from the front of the locomotive.

Analysis of the 4,240 highway-rail grade crossing accidents reported to FRA in 1993 shows that the lead locomotive of a train struck the motor vehicle in 3,171 of the accidents. The motor vehicle struck the lead locomotive in 664 accidents. In the remaining 405 accidents, the motor vehicle struck the train at a point behind the lead locomotive.

This information suggests that enhancing the visibility of the front of the train could affect up to 90 percent of crossing accidents. The effect of increasing the visibility of the side of the train does not have as clearly defined a potential to reduce accidents. Nevertheless, FRA continues to conduct research, including analysis of recently designed retro-reflective materials and evaluation of the accident experience of car fleets equipped with retro-reflective material. FRA is required by other legislation to consider the use of retro-reflective materials on railroad cars as well as locomotives, and will address the issue in a separate proceeding. See 49 U.S.C. 20148, Pub. L. 103–440, § 212 (Nov. 2, 1994). As soon as sufficient information becomes available to support a decision on whether to place reflective material on cars and locomotives, FRA will act accordingly. Such action might take the form of a proposal to amend this regulation before any rulemaking affecting railroad cars.

Applicability: Steam Locomotives; Locomotives Used Exclusively off the General System; and Private Grade Crossings

This proposal would amend Part 229 of title 49, Code of Federal Regulations, which applies, in general, to railroads in the general system and only to non-steam locomotives. FRA believes that, as a general rule, steam locomotives are used with relatively less frequency or at lower speeds than non-steam locomotives. Equipping steam locomotives with alerting lights would likely cost more per unit, and some steam operators would likely view the modification as detracting from the historic authenticity of this antique equipment. FRA presently has insufficient specific information indicating that safety would benefit from application of auxiliary lights to steam units. However, in light of the broad statutory mandate, FRA reserves the right to require application of auxiliary lights to such units in the final rule.

In 1992, FRA reviewed its policy regarding tourist, scenic and excursion railroads that transport passengers on lines separate from the general system of rail transportation. While in the past FRA has usually limited its exercise of jurisdiction over passenger operations to those on the general system, FRA determined that public safety required a uniform floor of regulation for this growing segment of the railroad marketplace. Only those railroads deemed ''insular'' were excluded from this exercise of jurisdiction; however, several existing sets of regulations, including Part 229, do not apply to passenger railroads that are not part of the general rail system. Since a major criterion of non-insular status is the presence of a public highway-rail grade crossing, the issue is presented in this proceeding whether these non-general system railroads should be required to equip their locomotives with auxiliary alerting lights.

Recently, FRA determined that all railroads with automated warning devices at public highway-rail crossings should be subject to new regulations governing the inspection, testing and maintenance of these ''grade crossing signals'' (59 FR 50086; September 30, 1994). The provision of the instant proposal that would exclude locomotives that do not operate at greater than 20 miles per hour would render the proposal inapplicable to many non-steam locomotives owned and operated by non-insular passenger railroads off the general system. However, in a minority of cases the proposed rule might require application of auxiliary lights. There may be reasonable basis for excluding some or all of these locomotives. For example, excursion service is often provided seasonally and on a limited basis. On some small passenger railroads, crossings may be less numerous or less heavily used by highway traffic. In other cases, service may be provided only in the daytime (when, according to experimental data, auxiliary lights may be less effective in gaining the attention of motorists).

The statute permits FRA to exclude categories of operations if the exclusion is in the public interest and consistent with safety. Although the statute does not expressly authorize use of cost/benefit analysis to make the findings justifying an exclusion, FRA has applied similar statutory language to consider effectiveness and cost impacts to enlighten the agency's deliberations. FRA solicits comment on the issue of steam locomotives and locomotives used exclusively off the general system. FRA has specifically invited the Tourist Railroad Association (TRAIN) to address the question on behalf of its member organizations.

FRA is also concerned with the safety of private grade crossings. The proposed rule requires use of auxiliary lights only at public grade crossings. Railroads clearly have an interest in reducing

accidents at private crossings and therefore may elect on their own to use auxiliary lights at such locations. FRA, however, requests comments on whether the agency should require use of auxiliary lights at all highway-rail grade crossings.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures and is considered ''nonsignificant'' under Executive Order 12866. It is also considered to be not significant under DOT policies and procedures. See 44 FR 11034.

Although the rule is ''nonsignificant,'' FRA nonetheless has prepared a regulatory evaluation addressing the economic impact of the rule. This regulatory evaluation has been placed in the docket and is available for public inspection and copying during normal business hours in Room 8201, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590. Copies may also be obtained by submitting a written request to the FRA Docket Clerk at the above address.

The evaluation found costs and benefits associated with the proposed rule calculated for a twenty-year period using the seven percent discount rate required by federal regulatory evaluation guidelines. FRA expects twenty-year auxiliary light installation and maintenance costs, which the railroad industry would not incur in the absence of the proposed rule, to total between $87 million and $106 million. The lower estimate is based on a scenario in which all future auxiliary lights are steady beam. The higher estimate is based on a scenario in which all future auxiliary lights are pulsing. Information available to FRA suggests that about 7,946 locomotives are currently equipped with auxiliary lights that comply with the proposed rule. About 52.84 percent of these locomotives have pulsing lights. The remaining 47.16 percent have steady beams. Assuming the industry continues to install auxiliary lights in this proportion, FRA expects costs to reach approximately $97 million over the next twenty years.

Although specifications for pulsing and steady beam lights differ, data are not available to establish that one light system is the more effective. Assuming both are equally effective, to justify incurring $97 million in costs, auxiliary lights must provide a benefit of preventing an average of at least 11 accidents annually. FRA estimates that auxiliary lights will prevent approximately 6,300 accidents (involving 1,493 fatalities and 3,056 injuries) valued at $2.424 billion over twenty years. Analysis indicates this accident reduction will almost certainly be achieved, and probably exceeded, by using auxiliary lights.

Costs and benefits associated with the industry voluntary in-service tests are not quantified in this analysis. FRA recognizes that participating railroads will incur data collection costs. However, given the permissive nature of the in-service tests, we cannot determine the level of participation or the magnitude of costs which the industry will incur. Nevertheless, safety benefits resulting from the knowledge gained should far outweigh costs incurred by the participants. Including test costs would not change the outcome of this analysis.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities, unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. It is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule does not require information collection; therefore, it is not necessary to estimate the public reporting burden for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. It has been determined that this rule will not have any effect on the quality of the environment.

Federalism Implications

This rule will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, a Federalism Assessment is not necessary.

Under 49 U.S.C. 20106 (formerly codified at 45 U.S.C. 434), issuance of this regulation preempts any State law, rule, regulation, order, or standard covering the same subject matter, except for a provision directed at a local safety hazard if that provision is consistent with this rule and does not impose an undue burden on interstate commerce.

List of Subjects in 49 CFR Part 229

Railroad safety.

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend Part 229, Title 49, Code of Federal Regulations as follows:

PART 229—[AMENDED]

1. Revise the authority citation for Part 229 to read as follows:

Authority: 49 U.S.C. 20102–20103, 20110–20112, 20114, 20137, 20143, 20301–20303, 20306, 20701–20703, 21301–21302, 21304, 21306, and 21311; 49 CFR 1.49 (c), (g) and (m).

2. Amend § 229.125 by revising the section heading and by adding paragraphs (d),(e),(f), (g) and (h) to read as follows:

§ 229.125 Headlights and auxiliary lights.

* * * * *

(d) Effective December 31, 1997, each lead locomotive operated at a speed greater than 20 miles per hour over one or more public highway-rail crossings shall be equipped with operative auxiliary lights, in addition to the headlight required by paragraph (a) or (b) of this section. A locomotive equipped on [date of publication of final rule] with auxiliary lights in conformance with § 229.133 shall be deemed to conform to the requirements of this section until [date four years after date of publication of final rule]. Auxiliary lights shall be composed as follows:

(1) Two white auxiliary lights shall be placed at the front of the locomotive to form a triangle with the headlight.

(i) The auxiliary lights shall be at least 36 inches above the top of the rail, except on MU locomotives and control cab locomotives where such placement would compromise the integrity of the car body or be otherwise impractical. Auxiliary lights on such MU locomotives and control cab locomotives shall be at least 24 inches above the top of the rail.

(ii) The auxiliary lights shall be spaced at least 36 inches apart if the vertical distance from the headlight to the horizontal axis of the auxiliary lights is 60 inches or more.

(iii) The auxiliary lights shall be spaced at least 60 inches apart if the vertical distance from the headlight to the horizontal axis of the auxiliary lights is less than 60 inches.

(2) Each auxiliary light shall produce at least 200,000 candela.

(3) The auxiliary lights shall be focused horizontally within 15 degrees of the longitudinal centerline of the locomotive.

(e) Auxiliary lights required by paragraph (d) of this section may be arranged to burn steadily or flash on approach to a crossing. If the auxiliary lights are arranged to flash, they shall flash alternately at a rate of at least 40 flashes per minute and at most 180 flashes per minute, for at least 20 seconds before the front of the train occupies the crossing. The flashing feature may be activated automatically and shall be capable of manual activation and deactivation by the locomotive engineer.

(f) Auxiliary lights required by paragraph (d) of this section shall be illuminated not less than 20 seconds before the locomotive arrives at a public highway-rail grade crossing.

(g) For the safety of persons along the right of way, including railroad employees and contractors—

(1) Railroads may elect to operate auxiliary lights when the speed over the crossing is less than 20 miles per hour; and

(2) Railroads shall have the discretion to illuminate locomotive auxiliary lights in other circumstances in addition to approaching a public highway-rail grade crossing.

(h) When one required auxiliary light and the headlight of a locomotive remain operative after the train has departed its initial terminal, the locomotive may proceed as an equipped locomotive until reaching the next point at which repairs to the inoperative light can be made. If no required auxiliary light remains operative, the locomotive may be moved only if the requirements of § 229.9 are met.

Donald M. Itzkoff,

Deputy Federal Railroad Administrator.

[FR Doc. 95–21143 Filed 8–25–95; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AC79

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1995-96 late-season hunting regulations for certain migratory game birds. The Service annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

DATES: The comment period for proposed late-season frameworks will end on September 7, 1995.

ADDRESSES: Comments should be mailed to Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358-1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1995

On March 24, 1995, the Service published for public comment in the **Federal Register** (60 FR 15642) a proposal to amend 50 CFR part 20, with comment periods ending July 21 for early-season proposals and September 4 for late-season proposals. Due to some unforeseen and uncontrollable publishing delays in the proposed late-season regulations frameworks, the Service has extended the public comment period to September 7, 1995. On June 16, 1995, the Service published for public comment a second document (60 FR 31890) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks.

On June 22, 1995, a public hearing was held in Washington, DC, as announced in the March 24 and June 16 **Federal Registers** to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons.

On July 21, 1995, the Service published in the **Federal Register** (60 FR 37754) a third document which dealt specifically with proposed early-season frameworks for the 1995-96 season.

On August 3, 1995, a public hearing was held in Washington, DC, as announced in the March 24, June 16, and July 21 **Federal Registers**, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. The Service later published a fourth document containing final frameworks for early seasons from which wildlife conservation agency officials from the States and Territories selected early-season hunting dates, hours, areas, and limits.

This document is the fifth in the series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations and deals specifically with proposed frameworks for the late-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, hours, areas, and limits. All pertinent comments on the proposals received through August 3, 1995, have been considered in developing this document. In addition, new proposals for certain late-season regulations are provided for public comment. The comment period is specified above under **DATES**. Final regulatory frameworks for late-season migratory game bird hunting are scheduled for publication in the **Federal Register** on or about September 25, 1995.

Presentations at Public Hearing

A report on the status of waterfowl was presented. This report is briefly reviewed below as a matter of public information, and is a summary of information contained in the ''Status of Waterfowl and Fall Flight Forecast'' report.

Most goose and swan populations in North America remain numerically sound and the size of most fall flights will be similar to those of last year. Production of young in 1995 is expected to be above average for most populations. Generally, spring phenology was earlier than normal in the western Arctic and Ungave Peninsula, later than normal in the prairie pothole region, and near normal in other important nesting areas. Habitat

conditions for nesting geese were variable in southern Canada and the northern U.S. Flooding in the western U.S. likely reduced the productivity of several Canada goose populations. Recent declines in sizes of the Atlantic, Southern James Bay, and dusky Canada goose populations are of continuing concern.

The 1995 estimate of total ducks in the traditional survey area was 35.9 million, an increase of 10 percent from that in 1994 and 11 percent higher than the long-term average. Mallards increased 18 percent to 8.3 million, the highest estimate since 1972. Gadwalls, redheads, and canvasbacks also increased over 1994 estimates to record-high levels. The number of ponds in May was similar to that of last year, but was 38 percent above the long-term average. In eastern areas of Canada and the U.S., surveys of strata 51-56 were conducted for the sixth consecutive year. In this area, the number of total ducks was similar to that of last year, but was 22 percent below the 1990-94 average. Habitats in many eastern areas were drier than average. The preliminary fall-flight index for all ducks is about 80 million birds, compared to 71 million last year. The fall flight will include approximately 11.1 million mallards, an increase of 15 percent over that of 1994.

During the 1994-95 hunting season, there were increases in the number of hunters, their days afield, and in both duck and goose harvests compared to the previous year. However, the number of waterfowl hunters continues to remain below levels observed in the 1970's. The sport harvest of ducks continues to increase from the record low in 1988, but remains well below the historic average. Goose harvest has increased three-fold during 1961-94. The rate at which ducks are harvested did not appear to increase during the 1994-95 season, in spite of liberalizations in hunting regulations. Harvest-survey data suggest that the reproductive success of ducks in the midcontinent region increased last year, but recruitment may have been poorer in other areas. Most goose species experienced declines in recruitment in 1994 compared to the exceptionally good year of 1993.

Review of Comments Received at Public Hearing

Seven individuals presented statements at the August 3, 1995, public hearing. These comments are summarized below.

Mr. Lloyd Alexander, representing the Delaware Division of Fish and Wildlife, supported the proposal to close the Canada goose season throughout the Atlantic Flyway. He stated that existing data do not support a limited 30-day season with a 1-bird daily bag limit in the New England States. He suggests that survival rates on birds migrating through the Maritime Provinces of Canada are actually lower than those breeding in northern Quebec and that better data are needed to delineate this population. He encouraged the Service to contact the Canadian Wildlife Service and request that the sport harvest on the Atlantic Population Canada Geese be suspended in Quebec and Ontario by emergency closure this year. Further, he asked the Service to work with representatives of the native communities to reduce subsistence taking in northern Quebec and ask the Canadian Wildlife Service to review the harvest and consider restrictions on Canada geese in the Maritime Provinces.

He commended the Service for extending the framework closing date on greater snow geese to March 10th, but asked the Service to consider the option of allowing states to split their seasons into 3 segments. He believed that the requested option is needed to allow more flexibility in helping farmers deal with crop depredation problems.

Mr. Bruce Barbour, representing the National Audubon Society, indicated that both the Eastern and Western Populations of tundra swans are stable and of no management concern. The National Audubon Society supports efforts to restore trumpeter swans throughout their former range, and believes that issues related to the incidental take of trumpeter swans during tundra swan seasons have been adequately addressed in this year's proposal. He reminded the Service of the concern for the Atlantic and Southern James Bay Populations of Canada geese and the dusky subspecies, and recommended that further restrictions should be sought for their recovery. Mr. Barbour then indicated concern for the extremely high populations of Mid-Continent Snow Geese that have resulted in severe damage to Arctic nesting areas. He reviewed this year's breeding duck population status and supported the Adaptive Harvest Management process used in selecting this year's liberal package and specified species restrictions. He indicated that increased hunting opportunity will occur on all species under the liberal option, and efforts should be initiated to cooperatively develop harvest approaches for these species. Finally, many programs are responsible for the recovery of the continent's duck resources; however, many of these programs are under attack through budget-balancing and any reductions could jeopardize future status and the increases in hunting opportunity.

Mr. Richard Elden, representing the Michigan Department of Natural Resources, commended the Service for its efforts to improve the regulations-setting process. He stated that the process has markedly improved and he is optimistic about adaptive harvest management. He summarized the development of Canada goose management plans in the Mississippi Flyway and their role in improving the cooperative management of the various populations. He stated that, based on the status of redheads this year, liberalization of the daily bag limit for this species is warranted and biologically supported, and requested that the Service reconsider its proposal and increase the number of redheads in the daily bag limit from 1 to 2 birds in the Mississippi Flyway.

Mr. Mike Harris, representing the Maryland Guide Association commented that Canada geese have changed their movement patterns in recent years and no longer migrate north in the spring, as they once did. Rather, he believes they remain as resident birds and breed locally. He maintains that although these geese are in good numbers, early seasons on these birds should not be allowed, because it reduces the overall numbers of geese available during the regular season. He claims that it is difficult to stay in business and suggests that if the hunting season is closed on Canada geese, the guides and outfitters should receive some financial assistance from the Federal Government. He recommended that a 30-day season with a 1-bird daily bag limit be offered until the changing patterns of resident geese could be reviewed.

Rollin W. Sparrowe, representing the Wildlife Management Institute, supported overall the Service's regulatory proposals. He commended the Service and State cooperators for their commitment toward implementing the Adaptive Harvest Management approach to duck hunting and to distance the process from political influence. He supported partial adoption of the Adaptive Harvest Management approach this year which recognized goals established in the North American Waterfowl Management Plan. He was pleased that after years of concern about the status of ducks, more liberal seasons could be offered. He asked why the Service did not consider adding an additional redhead to the bag limit in the Mississippi and Central Flyways when populations seemed

appropriate and urged the Service to reexamine this aspect before frameworks were finalized. He expressed continued concern about the status of pintails. He commended the Service and the Atlantic Flyway Council for proposing the closure on Canada goose hunting in the Atlantic Flyway, urged the Service to request the Canadian Wildlife Service to take similar action in Canada, and initiate research to understand the problem. He complimented the Service and Flyway Councils in the regulatory process and their systematic use of data in developing specific recommendations. All parties were urged to keep explaining to their constituencies the Adaptive Harvest Management process.

Rollin W. Sparrowe, also representing The Trumpeter Swan Society, was supportive of the ongoing efforts to restore and redistribute the Rocky Mountain Population of trumpeter swans within the Tri-State Area. He spoke of the conflict between range expansion efforts and waterfowl hunting programs in the Pacific Flyway, including tundra swan seasons in Montana, Utah, and Nevada. However, The Trumpeter Swan Society was satisfied with the Service's proposal to allow significantly modified swan seasons in those three States, which should enhance the likelihood for successful range expansion by trumpeter swans. He thanked the Pacific Flyway Council, the States of Montana, Utah, Nevada, and Oregon, and the Service for successfully developing a compromise that meets everyone's needs. He said his organization was small, with limited resources, but wants to assist all parties in the responsible effort to manage swans.

Scott Sutherland, representing Ducks Unlimited, expressed support for Adaptive Harvest Management and the regulatory matrix proposed by the Service this year which resulted in the liberal package recommendation. Under full implementation of AHM, however, Mr. Sutherland expressed a desire to modify the framework packages allowing a consideration of longer seasons with smaller daily bag limits. Mr. Sutherland also expressed his continued support for the Conservation Reserve Program and the North American Wetlands Conservation Act.

Mr. George Vandel, representing the Central Flyway Council, indicated that as Chairman of the Central Flyway Council, he was pleased with this year's process for establishing the proposed frameworks for late seasons. The Central Flyway supported the proposed use of flexible framework opening and closing dates for duck seasons in the Central Flyway, the liberal regulatory package, and the Adaptive Harvest Management process that was used in this interim year prior to its full implementation. He thanked the Service for the assistance with communication efforts on behalf of Adaptive Harvest Management, but pointed out that continuing efforts will be necessary for successful implementation in future years. He then strongly suggested that the Service work closely with the Flyway Councils in developing regulatory packages for next year. He believed that this cooperation will be especially crucial for further implementation by facilitating ownership and support for full implementation of Adaptive Harvest Management in 1996. Mr. Vandel summarized the history of goose population status in the Central Flyway and noted the great success of cooperative management practices that has resulted in record high flyway harvest of geese in 1994. However, he pointed out that the high population levels of light geese were of great concern. He recommended that the Service work through an international effort to identify specific actions needed to reduce these high populations and prevent further deterioration of important nesting habitats. He pointed out the importance of maintaining strong migratory bird survey efforts, as these tools are vital to the development of our management approaches. Finally, he indicated that the recovery of duck populations was clear evidence that the Conservation Reserve Program and other habitat programs are working.

Flyway Council Recommendations and Written Comments

The preliminary proposed rulemaking which appeared in the March 24 **Federal Register**, opened the public-comment period for late-season migratory game bird hunting regulations. As of August 3, 1995, the Service had received 27 comments; 25 of these specifically addressed late-season issues. The Service also received recommendations from all four Flyway Councils. Late-season comments are summarized and discussed in the order used in the March 24 **Federal Register**. Only the numbered items pertaining to late seasons for which written comments were received are included.

General

Written Comments: An individual from Wisconsin expressed support for the existing shooting hours of one-half hour before sunrise to sunset. He also opposed the requirement for steel shot and urged the development of non-toxic alternatives.

1. Ducks

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. Only those categories containing substantial recommendations are included below.

A. General Harvest Strategy

Written Comments: The Pennsylvania Game Commission expressed support for the proposed regulations strategies as an interim approach for 1995 only. They continue to be concerned, however, that the process relies on mid-continent mallards as a basis for regulatory changes in the Atlantic Flyway.

Likewise, the Delaware Department of Fish and Wildlife generally endorsed the concept of regulatory packages but remained concerned that the process was linked to the mid-continent populations of mallards and prairie wetland conditions.

The Illinois Department of Conservation also expressed support for the Adaptive Harvest Management (AHM) process but were concerned that there had been insufficient time to properly educate the public about AHM. They also felt that the set of regulatory options offered may be too limited, particularly with regard to bag limits.

The South Dakota Department of Game, Fish and Parks expressed support for AHM and the interim steps proposed for the 1995-95 hunting season. Additionally, they supported the idea of expanding the status of duck breeding populations and habitat used in AHM from mallards and prairie Canada ponds to include other duck species and ponds in the Dakotas and Montana.

The California Waterfowl Association commended the Service for moving towards AHM. They did express concern, however, for the potential of a season closure in California, the AHM terminology regarding regulations packages, and the use of only mid-continent mallards and prairie habitat conditions in the AHM process.

Individuals from Mississippi, Oklahoma, Arkansas, and Tennessee expressed support for the AHM process and the Service's proposed regulatory packages. However, one individual from Arkansas stated that future AHM criteria should be adjusted to be more conservative.

B. Framework Dates

Council Recommendations: The Atlantic Flyway Council recommended framework dates of October 1 to January 20.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended framework dates of September 28 and January 23.

The Central and Pacific Flyway Councils recommended framework dates of the Saturday nearest October 1 (September 30) to the Sunday nearest January 20 (January 21).

Written Comments: The South Dakota Department of Game, Fish and Parks opposed a fixed framework opening date.

An individual from Mississippi expressed support for a January 31 framework closing date.

Service Response: Traditional framework opening and closing dates have been oriented to the period October 1 - January 20, either as fixed calendar dates or ''floating'' dates, using as a guideline the Saturday nearest October 1 and the Sunday nearest January 20 to select opening and closing dates annually. The fixed framework dates of September 28 - January 23 recommended for the Mississippi Flyway this year would provide consistently wider frameworks over the years than the fixed October 1 - January 20 dates recommended for the Atlantic Flyway and the floating dates recommended for the Central and Pacific Flyways. To maintain consistency among flyways in the procedures for selecting framework dates, and because floating dates have been recommended annually for the Mississippi Flyway in recent years, the Service proposes to return to the use of floating framework dates for the Mississippi Flyway as well as the Central and Pacific Flyways.

C. Season Length and Bag Limits

Council Recommendations: The Atlantic Flyway Council recommended a 50-day season with a 5-bird daily bag limit, including no more than 1 black duck, 1 hen mallard, 1 pintail, 1 canvasback, 2 wood ducks, 2 redheads, and no harlequin ducks. Further, the Council recommended that States maintain a 40-percent reduction in the harvest of black ducks from the 1977-81 base period.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended a 50-day season with a 5-bird daily bag limit, including no more than 4 mallards (no more than 1 of which may be a hen), 1 black duck, 1 pintail, 1 canvasback, 2 wood ducks, and 2 redheads.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended a 50-day season with a 5-bird daily bag limit, including no more than 4 mallards (no more than 1 of which may be a hen), 3 mottled ducks, 1 black duck, 1 pintail, 1 canvasback, 2 wood ducks, and 2 redheads.

The Central Flyway Council recommended a 60-day season (83 days in the High Plains Mallard Management Unit with the last 23 days of the season taken no earlier than the Saturday closest to December 10) with a 5-bird daily bag limit, including no more than 1 hen mallard, 1 mottled duck, 1 pintail, 1 canvasback, 2 wood ducks, and 1 redhead.

The Pacific Flyway Council recommended a 93-day season (100 days in the Columbia Basin Management Unit) with a 6-bird daily bag limit, including no more than 1 hen mallard, 2 pintails, 1 canvasback, and 2 redheads.

Written Comments: Individuals from Tennessee, Virginia, Wisconsin, and Iowa expressed support for the proposed increase in season length but were against the proposed bag limit increase. An individual from Wisconsin expressed support for a 70-day season. Another individual from Wisconsin supported a 50-day season and a 4-bird daily bag limit, while an individual from Tennessee supported a 40-day season and a 4-bird daily bag limit.

An individual from Michigan was against any increase in the daily bag limit. An individual from Louisiana was opposed to a 50-day season and 5-bird daily bag limit and an individual from Iowa was opposed to a 40- to 50-day season with the proposed 5-bird daily bag limit. One individual from Kentucky expressed general support for low limits.

F. Zones and Split Seasons

Written Comments: The Nebraska Game and Parks Commission urged the Service to modify its existing zoning policy related to special management unit limitations.

G. Special Seasons/Species Management

i. Canvasback

Written Comments: An individual from Wisconsin supported the opening of canvasback season.

Service Response: In 1994, the Service adopted a strategy to manage canvasback harvests that considered population status, habitat conditions, and potential harvest. In brief, the strategy stated that if population status and expected production were sufficient to permit a harvest of 1 canvasback per day nationwide for the entire length of the regular duck season, the season on canvasbacks should be opened. Otherwise, the season on canvasbacks should be closed nationwide. This spring, results from the May Breeding Waterfowl and Habitat Survey indicate that habitat conditions and the size of the canvasback population are sufficient to open the season on canvasbacks. Therefore, the Service proposes a bag limit of 1 canvasback per day during the 1995-96 regular duck season.

ii. Redheads

Council Recommendations: The Mississippi Flyway Council recommended a bag limit of 2 redheads per day, an increase from the bag limit of 1 redhead per day proposed by the Service in March 1995.

Written Comments: The Texas Parks and Wildlife Department also requested a bag limit of 2 redheads per day in the Central Flyway.

Service Response: The Service prefers that proposals for changes in species- or population-specific regulations be based on more long-term strategies rather than in response to short-term changes in population estimates. The Service believes that such strategies should include the following: (1) an assessment of how the population responds to harvest and environmental conditions, (2) criteria that prescribe when regulations should be changed (i.e., become more restrictive or more liberal), (3) the range of regulatory options that will be considered (e.g., ranges of season lengths and bag limits), and (4) considerations for determining the efficacy of the harvest strategy. The proposals to permit a bag limit of 2 redheads per day were received in late July, and were based primarily in response to the estimated size of the redhead population during spring 1995. The Service believes that, due to the timing of the request, analyses of biological data sufficient to address the four criteria above have not been conducted. Further, additional harvest opportunities on redheads in all Flyways will result from increases in season lengths proposed for this year. The Service recommends that MBMO and the Flyways cooperatively develop protocol and strategies which address how to handle species- and population-specific proposals within the context of the Adaptive Harvest Management (AHM) Initiative, and believes the AHM Working Group is the appropriate forum for this endeavor.

iii. Other Species

Written Comments: An individual from Kentucky expressed support for keeping the black duck daily bag limit at 1 bird.

4. Canada Geese

B. Regular Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the regular season on the Atlantic Flyway Population of Canada geese be suspended; except for West Virginia, the Southern James Bay Population harvest areas of Pennsylvania, and a newly created New England Zone [Maine, New Hampshire, Rhode Island, Vermont (excluding the Lake Champlain Zone), Massachusetts (excluding the Western Zone), and Connecticut (excluding Litchford and Hartford Counties)]. In the New England Zone, the Council recommended a 30-day season, with a framework of October 1 through November 30, with a 1-bird daily bag limit.

The Atlantic Flyway Council also recommended that, in light of the decision to suspend the regular season on migrant Canada geese flyway-wide, the Service should immediately begin a review of framework dates for resident Canada goose seasons to determine whether dates could be expanded to increase harvests.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended several changes in Canada goose quotas, season lengths, etc., based on population status and population management plans and programs.

The Central Flyway Council recommended several changes for west-tier dark geese: (1) an increase in the aggregate bag limit from 3 to 4 birds, (2) an extension of the closing framework from January 31 to the Sunday nearest February 15 (February 18) for the Western Goose Zone of Texas, and (3) an increase in the dark goose bag limit from 2 to 4 birds in Sheridan County, Montana.

The Pacific Flyway Council recommended that the bag limit for Canada geese in central Montana, western Wyoming, and southeastern Idaho be increased from 3 to 4 birds. The Council also recommended that the daily bag limit for cackling Canada geese in the quota zones of western Oregon and western Washington be increased from 1 to 2 birds.

Written Comments: An individual from the Eastern Shore of Maryland expressed support for the closure of the regular Canada goose season for as long as it takes to rebuild the population to the levels of the mid-1980s.

An individual from Washington urged additional protection for the dusky Canada goose population wintering along the Chehalis River.

Service Response: Based on the continuing decline in the number of breeding pairs of Atlantic Flyway Population Canada geese, the Service endorses the Atlantic Flyway Council's recommendation to suspend the 1995-96 regular Canada goose season in the Chesapeake and Mid-Atlantic regions of the Atlantic Flyway, with exceptions for West Virginia and a portion of northwest Pennsylvania. The substantial drop in numbers of migratory Atlantic Flyway Canada geese (27 percent from 1994 and 75 percent from 1988) has continued despite harvest restrictions imposed in 1992. However, the Service does not support the recommendation to provide a 30-day season, betweeen October 1 and November 30, with a 1-bird daily bag limit, for States in the New England Zone. The Atlantic Flyway Population is currently managed under an approved Flyway Management Plan as a single Atlantic population unit, along with those birds breeding in the Ungava Bay and east-coastal Hudson Bay areas of Quebec. The Service will continue to manage geese on a population basis, guided by cooperatively developed management plans.

The information available to objectively separate these populations into two distinct management units, as the basis for the New England Zone, is currently very limited. Survival rates, based on limited bandings, are actually lower for the Maritimes component of the population than for geese in the area where the Flyway Council recommended a complete season closure. Also, productivity information, which would help assess the differences in survival rates, is very limited. In addition, only 2 years of population survey data are available for Canada geese breeding in the Maritimes, and these are too inconclusive to indicate whether numbers of breeding pairs are stable or declining. The Service does not oppose the delineation of a Maritime population of Atlantic Flyway Canada geese, if warranted, but believes that more information is needed before beginning a harvest strategy different from that for the population breeding in Quebec. Therefore, the Service encourages the Flyway Council to work cooperatively with the Canadian Provinces during the coming year to gather more data, review the key population parameters involving the Maritime component of Canada geese, update its Canada goose management plan, and make recommendations regarding an appropriate harvest strategy for this group of geese.

The Service concurs with the Central Flyway Council's recommended increase in the dark goose aggregate bag limit from 3 to 4 for the west-tier States. However, while this increase is justified for Canada geese, the Service believes that it is not appropriate for white-fronted geese. In the Western Goose Zone in Texas, biologists have identified a large group of wintering white-fronted geese believed to be part of the western segment of the Mid-Continent Greater White-fronted Goose Population. For this reason, the Service believes that the bag limit for whitefronts should be similar to those of other States in the range of this segment in the east-tier of the Central Flyway. Therefore, the Service proposes a 5-bird dark goose bag limit, including no more than 1 white-fronted goose and 4 Canada geese in the west-tier States of the Central Flyway.

C. Special Late Seasons

Council Recommendations: The Atlantic Flyway Council recommended a new experimental late season for resident Canada geese in New York, and additional days and area modifications for existing seasons in New Jersey, South Carolina, and Georgia. In addition, because of the high harvest of migrant Canada geese, the Council recommended suspension of the special late season in the Coastal Zone of Massachusetts.

The Pacific Flyway Council recommended revision of the Canada goose season framework in Cowlitz County south of the Kalama River and Clark County, Washington, to allow a special late season. The season would be subject to the following conditions: (1) season dates would be February 5 through March 10, (2) bag limits and checking requirements would be the same as the regular season, except that the season on cackling Canada geese would be closed, (3) the season would end upon the attainment of a quota of 5 dusky Canada geese (this quota would be taken from the total of 90 allocated under the regular season), and (4) fields selected for the season would not have more than 10 percent duskys in the flocks using the fields. Additionally, the season would be contingent upon an operational hazing program in place in the hunt area, administered by the U.S. Department of Agriculture, Animal Damage Control (ADC) in Washington. ADC would identify fields receiving depredation and contact hunters from a list supplied by the Washington Department of Fish and Game (WDFG).

WDFG would evaluate season effectiveness and estimate harvest, subspecies composition, hunter participation, and report band recoveries.

5. White-fronted Geese

Council Recommendations: The Central Flyway Council recommendations regarding dark geese involve white-fronted geese. See item **4. Canada Geese**. Specifically pertaining to white-fronted geese, the Council recommended an increase in the season length in the Eastern Goose Zone of Texas from 72 to 86 days.

The Pacific Flyway Council recommended several changes to white-fronted goose frameworks. The Council recommended that special bag-limit restrictions on whitefronts be removed by placing them within the overall dark goose limits except in the primary whitefront harvest areas in Alaska; the Counties of Lake, Klamath, and Harney in Oregon; and in the Northeastern and Balance-of-State Zones in California. In Oregon, the Council recommended that all whitefront seasons be concurrent with dark goose seasons. In California, the Council recommended that the whitefront season be extended by two weeks in the Sacramento Valley special goose closure portion of the Balance-of-State Zone.

7. Snow and Ross's Geese

Council Recommendations: The Atlantic Flyway Council recommended extending the framework closing date for snow geese to March 10.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the framework closing date for light geese be extended to March 10 and the daily bag limit be increased to 10 birds.

The Central Flyway Council recommended that the framework closing date for east- and west-tier light geese be extended to March 10.

Written Comments: The Pennsylvania Game Commission recommended that the State of Pennsylvania be included in those wintering States offered an extended framework closing date of March 10. They stated that increasing the framework would allow farmers to deal with depredation problems and provide additional hunting opportunity to Pennsylvania hunters.

Service Response: The Service concurs with the requests to extend the framework closing date for light geese to March 10 in the Atlantic, Mississippi, and Central Flyways, but believes that this extension should be limited to the primary wintering range of light geese in each flyway. The Service emphasizes that it believes that sport hunting opportunities should be limited to the fall migration and winter periods. The Service proposes to use Interstate Highway 80 as the northern boundary of this extension in the Central and Mississippi Flyways and that it be limited to the States of Delaware, Maryland, Pennsylvania, New Jersey, North Carolina, South Carolina, and Virginia in the Atlantic Flyway. In the coming year, the Service requests that States identify important staging areas for snow geese where they are co-mingled with other species to the extent that sport-hunting activities may potentially cause significant disturbance to other species. A major staging area has been identified in the Rainwater-Basin Area of Nebraska, and the Service proposes not to extend the framework date in the following counties or portions of counties that are south of the identified I-80 boundary: Adams, Clay, Fillmore, Franklin, Gosper, Hall, Hamilton, Harland, Kearney, Nuckolls, Phelps, Saline, Seward, Thayer, and York.

8. Swans

Council Recommendations: The Pacific Flyway Council reiterated its recommendations for a swan season in portions of Montana, Utah, and Nevada (see the June 16, 1995, **Federal Register**), except that the period should be 3 years instead of 5 years and the trumpeter swan quota allocation was made. Features of the Council's recommendation include: (1) changing ending framework dates in all three States from the Sunday closest to January 20 to December 1 for Montana, Sunday closest to December 15 for Utah, and the Sunday following January 1 for Nevada; (2) changing the hunt area in Montana by deleting those portions of Pondera and Teton Counties west of U.S. Highways 287-89 but including all of Chouteau County; (3) reduce Utah's statewide season to just the Great Salt Lake Basin, defined at those portions of Box Elder, Weber, Davis, Salt Lake, and Tooele counties lying south of State Highway 30 and I-80/84, west of I-15, and north of I-80. Number of swan permits would remain unchanged for Montana (500) and Nevada (650) but would be increased from 2,500 to 2,750 for Utah. A trumpeter swan quota of 20 birds would be allocated, with 15 to Utah and 5 to Nevada, with the season being closed either by the framework date or attainment of the quota, whichever occurs first. All hunters in Utah and Nevada would be required to participate in a mandatory parts check at designated sites within 72 hours of harvest for species determination; and hunters in Montana would continue to participate in a voluntary bill-measurement card program. The States would continue to monitor harvest composition, swan population during the hunt, and collect related harvest data. This information would be reported to the Service in a preliminary report by March 31 and a final report by June 30, 1996.

The Council offered the proposed frameworks in an attempt to forward trumpeter swan range expansion efforts throughout the western states and to cooperate with the Trumpeter Swan Society in their efforts with this species. The quota on trumpeter swans is believed to be biologically insignificant and estimated to be less than 1 percent of the population. The combined sport and subsistence harvest of Western Population tundra swans has averaged about 10 percent of the midwinter index during the past 10 years without negative impact to population status. In Utah, 26 percent of the swan harvest has occurred after December 1 and 15 percent after December 15, with December harvests as high as 57 percent in 1993. The Council believed that until December hunts can be demonstrated to threaten trumpeter swans they should be allowed to continue. Between 1962-94, upwards of 99 percent of the Utah harvest occurred in the Great Salt Lake area; therefore, closing of other areas will mainly remove local opportunity but not have a great effect on the overall harvest. The 250 (10 percent) increase in permits for Utah is requested to replace opportunity and harvest lost through area and season closures. Nevada biologists have no data suggesting that State's season is having any impact on trumpeter migration between the Tristate area and wintering areas in California. The Council offered these recommendations in an effort to integrate Western Population tundra swan and Rocky Mountain Population trumpeter swan management programs and to move ahead and evaluate various aspects of both programs.

Written Comments: Ruth E. Shea, a wildlife biologist associated with research and management of Rocky Mountain Population trumpeter swans since 1976, by letter of July 29, 1995, described a proposal by her and Dr. Rod Drewien which was the foundation of recommendations from The Trumpeter Swan Society and the Pacific Flyway Council included herein. The Shea-Drewien proposal incorporated two primary strategies: (1) increasing protection of migrant trumpeter swans

by tightly focusing tundra swan hunts in time and place; and (2) authorizing a small quota of trumpeter swans within each tundra swan hunt area in order to eliminate the liability of the otherwise legitimate tundra swan hunters who accidently shoot a trumpeter swan, with mandatory check of birds to adequately implement a quota system. She attributes the vulnerable status of this population to a diminished tendency to migrate and to a winter distribution that is largely in overcrowded, less favorable sites. She believes building a migration southward from eastern Idaho, to the fall staging area of the Bear River Delta in Utah would be an important step in restoring a secure winter distribution. To enhance survival of those few trumpeters that currently migrate into Utah and Nevada, Shea and Drewein proposed focusing tundra swan hunting only in areas and at times where tundra swans are abundant and trumpeters are less likely to be present or have access to suitable security areas. She deemed an ending date of ''plus or minus'' December 1, in Utah to be the single most important feature of their proposal. Rationale for using this date included: (1) in most years security areas on the Bear River Migratory Bird Refuge freeze around Thanksgiving, potentially forcing swans to use non-secure habitats; and (2) Service and Pacific Flyway efforts to assist in winter distribution includes hazing swans from overcrowded areas, as early as practical in November, which when coupled with shrinking habitat with the onset of winter has potential for pushing swans into the Great Salt Lake Basin by late November. She said that a December 1 closure would still give Utah swan hunters about 45 days of opportunity and would provide future opportunity to translocated trumpeters from Idaho to the Bear River Migratory Bird Refuge vicinity during December. She believes trumpeter swan restoration efforts have been stymied by real or perceived conflicts with the swan hunt, but believes their recommended approach would meet the very different management needs for two species of swans.

Laurence N. Gillete, President of The Trumpeter Swan Society (TTSS), in a letter of July 31, 1995, again urged the Service to adopt a closing date of December 1 or the first Sunday in December, if there is a tradition of ending seasons on a Sunday, for the tundra swan hunting season in Utah to provide additional protection for migrating Rocky Mountain Population trumpeter swans. With the exception of the closing date in Utah, TTSS is in agreement with the Pacific Flyway Council's recommendations as reported in the Federal Register of June 16, 1995. Because these trumpeter swans winter in marginal habitat in the Tristate region of Montana, Idaho, and Wyoming, and have a poor tradition for migrating elsewhere, they will suffer a die-off in a severe winter. He believes a rapid redistribution to better winter habitat is critical to the population's survival. TTSS had previously endorsed a 5-year experimental plan proposed by Drewien and Shea [see comments from TTSS and Shea elsewhere in this document]. Of the numerous recommended changes, the most critical feature of the plan was modification of hunting seasons in Utah to increase survival of migrating swans. The Great Salt Lake Basin is in the most likely migration path for trumpeters from the Tristate area. The December 1 date is favored because: (1) it coincides with the average date for freezeup of many lakes in the Tristate area which could force trumpeters south, (2) it is about the time that many wetlands within in Bear River Migratory Bird Refuge which could increase the vulnerability of Trumpeters that have migrated to the refuge, and (3) it anticipates increased trumpeter migrations and not past accidental shootings. TTSS does not object to a quota system that would allow a take of trumpeter swans if other conditions of their proposal are met, including modification of seasons and boundaries for swan hunting and of management on the Bear River Migratory Bird Refuge. The quota system is not intended to protect trumpeters but to protect hunters from liability if they accidentally shoot a trumpeter. He regrets the potential loss of hunting opportunity that the December 1 closing date would have on tundra swan hunters but believes it may be the only way to provided adequate protection to migrating trumpeters.

The Humane Society of the United States (Humane Society) by letter of July 21, 1995, requests that the Service close all swan hunting seasons and contends that tundra swan hunting impedes, if not prevents, winter range expansion and recovery of trumpeter swans. The Humane Society says the Pacific Flyway Council's recommendation for increased permits in Utah and a quota on trumpeter swans in exchange for season modifications should be denied.

Service Response: The Service commends both the Pacific Flyway Council and The Trumpeter Swan Society for seeking ways to enhance trumpeter swan range expansion while retaining tundra swan hunting. The recommendations from both the Council and TTSS were obviously not made easily. For persons and groups solely interested in either restoration or hunting but not both, those recommendations will be perceived only as without benefit.

Both sets of recommendations were similar, with the exception of the contentious closing date in Utah. The Council recommends a closing date for Utah that would be the Sunday closest to December 15, which would range between December 12 and 18. TTSS recommends a closing date of December 1, but believes there could be latitude to accommodate Sunday closing as is traditional in most Western states.

The Service supports the basic recommendations from both the Council and the TTSS; however, considering the significance of the general swan season, the Service will propose a season ending date of the first Sunday in December. This would allow the ending date to range between December 1 and 7, with the season ending on December 3 this year and, if changes are not deemed essential, December 1 in 1996, etc.

Further, the Service believes it is important to annually review all information and potentially modify seasons in time and place should circumstances warrant. While TTSS believes quotas on trumpeter swans are not as important to protect the species, as are closing dates and other factors, the Service believes quotas will provide additional protection to trumpeter swans until the experimental period can be fully evaluated. Further, we propose that the overall evaluation be made after a 5-year period, subject to annual reporting and review.

The Service insists upon assurance from Utah and Nevada that birds will be physically examined by biologists and that maximum compliance with reporting be sought using whatever means is appropriate for that particular State. We do not believe reporting must be done within 72 hours, but it seems reasonable that it could be accomplished within 3 working days. Timely classification of swans is important if the trumpeter quota is to be used effectively. The need or lack of need for Montana to have a season without a quota or to use a different method of reporting harvest will be reviewed annually; and continued departure from the requirement in Utah and Nevada will likely be contingent upon the continued healthy status of that segment of the trumpeter swan population that has had the potential for being affected by the Montana season, even without the conservative changes proposed herein.

Public Comment Invited

Based on the results of migratory game bird studies now in progress, and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States.

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability of specific, reliable data on this year's status before mid-June for migratory shore and upland game birds and some waterfowl, and before late July for most waterfowl. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge comments received, but a substantive response to individual comments may not be provided.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14),'' filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). However, this programmatic document does not prescribe year-specific regulations; those are developed annually. The annual regulations and options are being considered in the Environmental Assessment, ''Waterfowl Hunting Regulations for 1995,'' which is available upon request. In addition, the Service has prepared an Environmental Assessment, ''Proposal to Establish General Swan Hunting Seasons in Parts of the Pacific Flyway'' to reconcile conflicting strategies for managing two swan species in the Pacific Flyway by establihsing for a trial period a general swan season in portions of Montana, Nevada, and Utah. The Environmental Assessment is available upon request.

Endangered Species Act Consideration

The Division of Endangered Species is completing a biological opinion on the proposed action. As in the past, hunting regulations this year will be designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. The Service's biological opinions resulting from consultations under Section 7 are considered public documents and are available for inspection in the Division of Endangered Species (room 432) and the Office of Migratory Bird Management (room 634), Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act; Executive Order (E.O.) 12866 and the Paperwork Reduction Act

In the **Federal Register** dated March 24, 1995 (60 FR 15642), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing an Analysis of Regulatory Effects and an updated Final Regulatory Impact Analysis (FRIA), and publication of a summary of the latter. Although a FRIA is no longer required, the economic analysis contained in the FRIA was reviewed and the Service determined that it met the requirements of E.O. 12866. In addition, the Service prepared a Small Entity Flexibility Analysis, under the Regulatory Flexibility Act (5 U.S.C. 601 et seq), which further document the significant beneficial economic effect on a substantial number of small entities. This rule was not subject to review by the Office of Management and Budget (OMB) under E.O. 12866.

These proposed regulations contain no information collections subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). However, the Service does utilize information acquired through other various information collections in the formulation of migratory game bird hunting regulations. These information collection requirements have been approved by OMB and assigned clearance numbers 1018-0005, 1018-0006, 1018-0008, 1018-0009, 1018-0010, 1018-0015, 1018-0019, and 1018-0023.

Authorship

The primary author is Ron W. Kokel, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

PART 20—[AMENDED]

The authority citation for Part 20 is revised to read as follows:

Authority: 16 U.S.C. 703-711, 16 U.S.C. 712, and 16 U.S.C. 742 a-j.

Dated: August 17, 1995

Robert P. Davison

Acting Assistant Secretary for Fish and Wildlife and Parks

Proposed Regulations Frameworks for 1995–96 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 1995, and March 10, 1996.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Definitions: For the purpose of hunting regulations listed below, the collective terms ''dark'' and ''light'' geese include the following species:

Dark geese - Canada geese, white-fronted geese, brant, and all other goose species except light geese.

Light geese - snow (including blue) geese and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions that are new or modified from previous years are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by flyway.

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Ducks, Mergansers, and Coots

Outside Dates: Between October 1 and January 20.

Hunting Seasons and Duck Limits: 50 days and daily bag limit of 5 ducks, including no more than 1 hen mallard, 1 black duck, 1 pintail, 1 mottled duck, 1 fulvous whistling duck, 2 wood ducks, 2 redheads, and 1 canvasback.

Closures: The season on harlequin ducks is closed.

Sea Ducks: In all areas outside of special sea duck areas, sea ducks are included in the regular duck daily bag and possession limits. However, during the regular duck season within the special sea duck areas, the sea duck daily bag and possession limits may be in addition to the regular duck daily bag and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Zoning and Split Seasons: Delaware, Maryland, North Carolina, Rhode Island, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone; while Florida, Georgia, and South Carolina may split their Statewide seasons into two segments.

Canada Geese

Season Lengths, Outside Dates, and Limits: The canada goose season is suspended throughout the Flyway except as noted below. Unless specified otherwise, seasons may be split into two segments.

Connecticut: A special experimental season may be held in the South Zone between January 15 and February 15, with 5 geese per day.

Georgia: In specific areas, a 15-day experimental season may be held between November 15 and February 5, with a limit of 5 Canada geese per day.

Massachusetts: In the Central Zone, a 16-day season for resident Canada geese may be held during January 21 to February 5, with 5 geese per day.

New Jersey: An experimental special season may be held in designated areas of Northeast, Northwest, and Southeast New Jersey from January 27 to February 10, with 5 geese per day.

New York: A special experimental season may be held between January 21 and February 15, with 5 geese daily in Westchester County and portions of Nassau, Putnam, and Rockland Counties.

Pennsylvania: Erie, Mercer, and Butler Counties - 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Crawford County - 35 days between October 1 and January 20; with 1 goose per day.

An experimental season may be held in the Susquehanna/Juniata Zones from January 20 to February 5 with 5 geese per day.

South Carolina: A 12-day special season may be held in the Central Piedmont, Western Piedmont, and Mountain Hunt Units during November 15 to February 15, with a daily bag limit of 5 Canada geese per day.

West Virginia: 70 days between October 1 and January 20, with 3 geese per day.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and February 10, with 5 geese per day, except closing dates may be extended to March 10 in New Jersey, Delaware, Maryland, North Carolina, Pennsylvania, South Carolina, and Virginia. States may split their seasons into two segments.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 50-day season between October 1 and January 20, with 2 brant per day.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest October 1 (September 30) and the Sunday nearest January 20 (January 21).

Hunting Seasons and Duck Limits: 50 days with a daily bag limit of 5 ducks, including no more than 4 mallards (no more than 1 of which may be a female), 3 mottled ducks, 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback, and 1 redhead.

Merganser Limits: The daily bag limit is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Minnesota and Mississippi, the season may be split into two segments.

In Arkansas, the season may be split into three segments.

Pymatuning Reservoir Area, Ohio: The seasons, limits, and shooting hours shall be the same as those selected in the adjacent portion of Pennsylvania (Northwest Zone).

Geese

Split Seasons: Seasons for geese may be split into two segments.

Season Lengths, Outside Dates, and Limits: States may select seasons for geese not to exceed 70 days for dark geese between the Saturday nearest October 1 (September 30) and January 31, and 107 days for light geese between the Saturday nearest October 1 (September 30) and February 14, except in those States and portions of States south of Interstate Highway 80 in Iowa, Illinois, Indiana, and Ohio, where seasons for light geese may extend until March 10. The daily bag limit is 10 geese, to include no more than 3 Canada geese, 2 white-fronted geese, and 2 brant. Specific regulations for Canada

geese and exceptions to the above general provisions are shown below by State.

Alabama: In the SJBP Goose Zone, the season for Canada geese may not exceed 35 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: The season for Canada geese may extend for 23 days in the East Zone and 14 days in the West Zone. In both zones, the season may extend to February 15. The daily bag limit is 2 Canada geese. In the remainder of the State, the season for Canada geese is closed.

Illinois: The total harvest of Canada geese in the State will be limited to 172, 600 birds. Limits are 3 Canada geese daily and 10 in possession.

(a) North Goose Zone - The season for Canada geese will close after 93 days or when 22,014 birds have been harvested in the Northern Illinois Quota Zone, whichever occurs first.

(b) Central Goose Zone - The season for Canada geese will close after 93 days or when 35,168 birds have been harvested in the Central Illinois Quota Zone, whichever occurs first.

(c) South Goose Zone - The harvest of Canada geese in the Southern Illinois and Rend Lake Quota Zones will be limited to 62,691 and 17,830 birds, respectively. The season for Canada geese in each zone will close after 89 days or when the harvest limit has been reached, whichever occurs first. In the Southern Illinois Quota Zone, if any of the following conditions exist after December 20, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

1. 10 consecutive days of snow cover, 3 inches or more in depth.

2. 10 consecutive days of daily high temperatures less than 20 degrees F.

3. Average body weights of adult female geese less than 3,200 grams as measured from a weekly sample of a minimum of 50 geese.

4. Starvation or a major disease outbreak resulting in observed mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

In the remainder of the South Goose Zone, the season may extend for 89 days or until both the Southern Illinois and Rend Lake Quota Zones have been closed, whichever occurs first.

Indiana: The total harvest of Canada geese in the State will be limited to 98,000 birds.

(a) Posey County - The season for Canada geese will close after 65 days or when 7,200 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Remainder of the State - The season for Canada geese may extend for 70 days in the respective duck-hunting zones, except in the SJBP Zone, where the season may not exceed 35 days. The daily bag limit is 3 Canada geese, except in the SJBP Zone, where the daily bag limit is 2.

Iowa: The season may extend for 70 days. The daily bag limit is 2 Canada geese.

Kentucky:

(a) Western Zone - The season for Canada geese may extend for 65 days (80 days in Fulton County), and the harvest will be limited to 34,500 birds. Of the 34,500-bird quota, 22,425 birds will be allocated to the Ballard Reporting Area and 6,555 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 65-day season, the season in that reporting area will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 65 days (80 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 3 Canada geese.

(b) Pennyroyal/Coalfield Zone - The season may extend for 35 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State - The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: The season for Canada geese may extend for 9 days. During the season, the daily bag limit for Canada and white-fronted geese is 2, no more than 1 of which may be a Canada goose. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan: The total harvest of Canada geese in the State will be limited to 99,500 birds.

(a) North Zone - The framework opening date for all geese is September 23 and the season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese.

(b) Middle Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese.

(c) South Zone

(1) Allegan County GMU - The season for Canada geese will close after 51 days or when 2,500 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Muskegon Wastewater GMU - The season for Canada geese will close after 54 days or when 700 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(3) Saginaw County GMU - The season for Canada geese will close after 51 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(4) Tuscola/Huron GMU - The season for Canada geese will close after 51 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(5) Remainder of South Zone -

(i) East of U.S. Highway 27/127 - The season for Canada geese may extend for 30 days. The daily bag limit is 1 Canada goose.

(ii) West of U.S. Highway 27/127 - The Season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose during the first 30 days, and 2 Canada geese during the remaining 10 days, which may begin no earlier than November 23.

(d) Southern Michigan GMU - An experimental special Canada goose season may be held between January 6 and February 4. The daily bag limit is 2 Canada geese.

Minnesota:

(a) West Zone

(1) West Central Zone - The season for Canada geese may extend for 30 days. In the Lac Qui Parle Zone, the season will close after 30 days or when 16,000 birds have been harvested, whichever occurs first. Throughout the West Central Zone, the daily bag limit is 1 Canada goose.

(2) Remainder of West Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Southeast Zone - The season for Canada geese may extend for 70 days, except in the Twin Cities Metro Zone and Olmsted County, where the season may not exceed 80 days. The daily bag limit is 2 Canada geese.

(d) Remainder of the State - The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(e) Fergus Falls/Alexandria Zone - An experimental special Canada goose season of up to 10 days may be held in December. During the special season, the daily bag limit is 2 Canada geese.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri:

(a) Swan Lake Zone - The season for Canada geese will close after 40 days or when 5,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Schell-Osage Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese.

(c) Central Zone - The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese. An experimental special season of up to

10 consecutive days prior to October 15 may be selected in addition to the regular season. During the special season, the daily bag limit is 3 Canada geese.

(d) Remainder of the State - The season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Ohio: The season may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 30 days and the daily bag limit is 1 Canada goose. In the Pymatuming Reservoir Area, the seasons, limits, and shooting hours for all geese shall be the same as those selected in the adjacent portion of Pennsylvania.

Tennessee:

(a) Northwest Zone - The season for Canada geese will close after 76 days or when 12,900 birds have been harvested, whichever occurs first. The season may extend to February 15. All geese harvested must be tagged. The daily bag limit is 3 Canada geese.

(b) Southwest Zone - The season for Canada geese may extend for 61 days, and the harvest will be limited to 1,500 birds. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone - The season for Canada geese will close after 50 days or when 1,800 birds have been harvested, whichever occurs first. All geese harvested must be tagged. The daily bag limit is 2 Canada geese.

(d) Remainder of the State - The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The total harvest of Canada geese in the State will be limited to 118,400 birds.

(a) Horicon Zone - The framework opening date for all geese is September 23. The harvest of Canada geese is limited to 71,700 birds. The season may not exceed 80 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone - The framework opening date for all geese is September 23. The harvest of Canada geese is limited to 1,900 birds. The season may not exceed 65 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone - The framework opening date for all geese is September 23. The harvest of Canada geese is limited to 40,300 birds, with 500 birds allocated to the Mississippi River Subzone. The season may not exceed 86 days and the daily bag limit is 2 Canada geese. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 39,800 birds.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, Southern Illinois, and Rend Lake Quota Zones in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan, the Lac Qui Parle Zone in Minnesota, the Swan Lake Zone in Missouri, the Northwest and Kentucky/Barkley Lakes Zones in Tennessee, and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective zone (and associated area, if applicable) will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Ducks, Mergansers, and Coots

Outside Dates: Between September 30 through January 21.

Hunting Seasons and Duck Limits:

(1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 83 days and a daily bag limit of 5 ducks, including no more than 1 female mallard, 1 mottled duck, 1 pintail, 1 redhead, 1 canvasback and 2 wood ducks. The last 23 days may start no earlier than the Saturday nearest December 10 (December 9).

(2) Remainder of the Central Flyway: 60 days and a daily bag limit of 5 ducks, including no more than 1 female mallard, 1 mottled duck, 1 pintail, 1 redhead, 1 canvasback, and 2 wood ducks.

Merganser Limits: The daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), and South Dakota (Low Plains portion) may select hunting seasons by zones.

In Montana, Nebraska (Low and High Plains portions), New Mexico, North Dakota (Low Plains portion), Oklahoma (Low and High Plains portions), South Dakota (High Plains portion), and Texas (Low Plains portion), the season may be split into two segments.

In Colorado, Kansas (Low and High Plains portions), North Dakota (High Plains portion), and Wyoming, the season may be split into three segments.

Geese

Season Lengths, Outside Dates, and Limits: States may select seasons not to exceed 107 days; except for dark geese, which may not exceed 86 days in Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas. For dark geese, outside dates for seasons may be selected between the Saturday nearest October 1 (September 30) and January 31, except in the Western Goose Zone of Texas, where the closing date is the Sunday nearest February 15 (February 18). For light geese, outside dates for seasons may be selected between the Saturday nearest October 1 (September 30) and the Sunday nearest February 15 (February 18), except in Colorado, Kansas, Nebraska (south of I-80, except for Adams, Clay, Fillmore, Franklin, Gosper, Hall, Hamilton, Harland, Kearney, Nuckolls, Phelps, Saline, Seward, Thayer, and York Counties) New Mexico, Oklahoma, and Texas, and Wyoming (south of I-80) where the closing date is March 10. Seasons may be split into two segments.

Daily bag limits in States in goose management zones within States, may be as follows:

Colorado: The daily bag limit is 5 light and 5 dark geese, including no more than 1 white-fronted and 4 Canada geese.

Kansas: The daily bag limit is 10 light and 2 dark geese, including no more than 1 white-fronted goose.

Montana: The daily bag limit is 5 light and 5 dark geese, including no more

than 1 white-fronted and 4 Canada geese.

Nebraska: The daily bag limit is 10 light and 2 dark geese, including no more than 1 white-fronted goose.

New Mexico: For the Middle Rio Grande Valley Zone, the daily bag limit is 10 light and 5 dark, including no more than 1 white-fronted and 4 Canada geese.

For the remainder of the State, the daily bag limit is 5 light and 5 dark geese, including no more than 1 white-fronted and 4 Canada geese.

North Dakota: The daily bag limit is 10 light and 2 dark geese.

Oklahoma: The daily bag limit is 10 light and 2 dark geese, including no more than 1 white-fronted goose.

South Dakota: The daily bag limit is 10 light and 2 dark geese, including no more than 1 white-fronted goose.

Texas: For the Western Goose zone, the daily bag limit is 5 light and 5 dark geese, including no more than 1 white-fronted and 4 Canada geese.

For the Eastern Goose Zone, the daily bag limit is 10 light and 2 dark geese, including no more than 1 white-fronted goose.

Wyoming: The daily bag limit is 5 light and 5 dark, with no more than 1 white-fronted and 4 Canada geese.

Pacific Flyway

Ducks, Mergansers, Coots, and Common Moorhens

Hunting Seasons and Duck Limits: Concurrent 93 days and daily bag limit of 6 ducks, including no more than 1 female mallard, 2 pintails, 2 redheads and 1 canvasback.

In the Columbia Basin Mallard Management Unit, the seasons may be an additional 7 days. The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 93 days.

Coot and Common Moorhen Limits: The daily bag and possession limits of coots and common moorhens are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest October 1 (September 30) and the Sunday nearest January 20 (January 21).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments either Statewide or in each zone.

Colorado, Montana, New Mexico, and Wyoming may split their duck seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 1), and the Sunday nearest January 20 (January 21), and the basic daily bag limits are 3 light geese and 3 dark geese.

Brant Season - A 16-consecutive-day season may be selected in Oregon and Washington, and a 30-consecutive day season may be selected in California. In only California, Oregon, and Washington, the daily bag limit is 2 brant and is additional to dark goose limits, and the open season on brant in those States may differ from that for other geese.

Closures: There will be no open season on Aleutian Canada geese in the Pacific Flyway. The States of California, Oregon, and Washington must include a statement on the closure for that subspecies in their respective regulations leaflet. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Arizona: The daily bag limit for dark geese is 2 geese.

California:

Northeastern Zone - White-fronted geese and cackling Canada geese may be taken only during the first 23 days of the goose season. The daily bag limit is 3 geese and may include no more than 2 dark geese; including not more than 1 cackling Canada goose.

Colorado River Zone - The seasons and limits must be the same as those selected in the adjacent portion of Arizona (South Zone).

Southern Zone - The daily bag and possession limits for dark geese is 2 geese, including not more than 1 cackling Canada goose.

Balance-of-the-State Zone - A 79-day season may be selected, except that white-fronted geese and cackling Canada geese may be taken during only the first 65 days of such season. Limits may not include more than 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2, provided that they are Canada geese other than cackling Canada geese for which the daily limit is 1.

Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Counties of Del Norte and Humboldt, there will be no open season for Canada geese.

(2) In the Sacramento Valley Area, the season on white-fronted geese must end on or before December 14, and, except in the Western Canada Goose Hunt Area, there will be no open season for Canada geese.

(3) In the San Joaquin Valley Area, the hunting season for Canada geese will close no later than November 23.

Colorado: The daily bag limit for dark geese is 2 geese.

Idaho:

Northern Unit - The daily bag limit is 4 geese, including 4 dark geese, but not more than 3 light geese.

Southwest Unit and Southeastern Unit - The daily bag limit on dark geese is 4.

Montana:

West of Divide Zone and East of Divide Zone - The daily bag limit on dark geese is 4.

Nevada:

Clark County Zone - The daily bag limit of dark geese is 2 geese.

New Mexico: The daily bag limit for dark geese is 2 geese.

Oregon: Except as subsequently noted, the dark goose limit is 4, including not more than 1 cackling Canada goose.

Harney, Lake, Klamath, and Malheur Counties Zone - The season length may be 100 days. The dark goose limit is 4, including not more than 2 white-fronted geese and cackling Canada goose.

Western Zone - In the Special Canada Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 210 dusky Canada geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 3, including not more than 1 cackling Canada goose.

Utah: The daily bag limit for dark geese is 2 geese.

Washington: The daily bag limit is 4 geese, including 4 dark geese but not more than 3 light geese.

West Zone - In the Lower Columbia River Special Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 90 dusky Canada geese. See section on quota zones.

Wyoming: The daily bag limit is 4 dark geese. In Lincoln, Sweetwater, and Sublette Counties, the combined special September Canada goose seasons and the regular goose season shall not exceed 100 days.

Quota Zones: Seasons on Canada geese must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon and Washington. The September Canada goose season, the regular goose season, any special late Canada goose season, and any extended falconry season, combined, must not exceed 107 days and the established quota of dusky Canada geese must not be exceeded. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of Aleutian Canada geese. The daily bag limit of Canada geese may not include more than 1 cackling Canada goose.

In the designated areas of the Washington Quota Zone, a special late Canada goose may be held between February 5 and March 10. The daily bag limit may not include either Aleutian or cackling Canada geese.

Swans

In designated areas of Utah, Nevada, and the Pacific Flyway portion of Montana, an open season for taking a limited number of swans may be selected. Permits will be issued by States and will authorize each permittee to take no more than 1 swan per season. The season may open no earlier than the Saturday nearest October 1 (September 30). The States must implement a harvest-monitoring program to measure the species composition of the swan harvest. In Utah and Nevada, the harvest-monitoring program must include physical examination of all harvested swans by State or Federal biologists. All States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination or, in the case of Montana, reporting bill-measurement and color information. All States must provide to the Service by June 30, 1996, a report covering harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas. These seasons will be subject to the following conditions:

In Utah, no more than 2,750 permits may be issued. The season must end no later than the first Sunday in December (December 3) or upon attainment of 15 trumpeter swans in the harvest, whichever occurs earliest.

In Nevada, no more than 650 permits may be issued. The season must end no later than the Sunday following January 1 (January 7) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In Montana, no more than 500 permits may be issued. The season must end no later than December 1.

Tundra Swans

In Central Flyway portion of Montana, and in New Jersey, North Carolina, North Dakota, South Dakota, and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. The States must obtain harvest and hunter participation data. These seasons will be subject to the following conditions:

In the Atlantic Flyway

—The season will be experimental.

—The season may be 90 days, must occur during the light goose season, but may not extend beyond January 31.

—In New Jersey, no more than 200 permits may be issued.

—In North Carolina, no more than 6,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the Central Flyway

—The season may be 107 days and must occur during the light goose season.

—In the Central-Flyway portion of Montana, no more than 500 permits may be issued.

—In North Dakota, no more than 2,000 permits may be issued.

—In South Dakota, no more than 1,500 permits may be issued.

In the Pacific Flyway

—Except as subsequently noted, a 100-day season may be selected between the Saturday nearest October 1 (October 1), and the Sunday nearest January 20 (January 21). Seasons may be split into 2 segments. The States of Montana, Nevada, and Utah must implement a harvest-monitoring program to measure the extent of accidental harvest of trumpeter swans.

—In Utah, no more than 2,500 permits may be issued. The season must end on or before December 15.

—In Nevada, no more than 650 permits may be issued.

—In the Pacific-Flyway portion of Montana, no more than 500 permits may be issued.

Area, Unit and Zone Descriptions

Geese

Atlantic Flyway

Georgia

A Special Season for Canada Geese: Statewide.

New Jersey

Special Area for Canada Geese:

Northeast - that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with the Pennsylvania State boundary; then north along the Pennsylvania boundary in the Delaware River to its intersection with the New York State boundary.

Northwest - that portion of the State within a continuous line that runs east from the Pennsylvania State boundary at the toll bridge in Columbia to Route 94; then north along Route 94 to Route 206; then north along Route 206 to the Pennsylvania State boundary in the Delaware River; then south along the Pennsylvania State boundary int he Delaware River to the beginning point. Hereafter this proposed expansion of the hunt area will be refereed to as the northwestern area.

Southeast - that portion of the State within a continuous line that runs east from the Atlantic Ocean at Ship Bottom along Route 72 to the Garden State Parkway; then south along the Garden State Parkway to Route 9; then south along Route 9 to Route 542; then west along Route 542 to the Mullica River; then north (upstream) on the Mullica River to Route 206; then south on Route 206 to Route 536; then west on route 536 to Route 55; then south on Route 55 to Route 40; then east on Route 50 to Route 557; then south on Route 557 to Route 666; then south on Route 666 to Route 49; then east on Route 49 to route 50; then south on Route 50 to Route 631; then east on Route 631 to Route 623; then east on Route 623 to the Atlantic Ocean; then north to the beginning point.

New York

Special Area for Canada Geese: Westchester County and portions of Nassau, Putnam and Rockland Counties. See State regulations for detailed description.

South Carolina

Canada Goose Area: The Central Piedmont, Western Piedmont, and Mountain Hunt Units. These designated areas include: Counties of Abbeville, Anderson, Berkeley (south of Highway 45 and east of State Road 831), Cherokee, Chester, Dorchester, Edgefield, Fairfield, Greenville, Greenwood, Kershaw, Lancaster, Laurens, Lee, Lexington, McCormick,

Newberry, Oconee, Orangebird (south of Highway 6), Pickens, Richland, Saluda, Spartanburg, Sumten, Union, and York.

Swans

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287-89.

Utah

Open Area: Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole counties lying south of State Hwy 30, I-80/84, west of I-15, and north of I-80.

[FR Doc. 95–21316 Filed 8–25–95; 8:45 am]

BILLING CODE 4310–55–F

Notices

Federal Register
Vol. 60, No. 166
Monday, August 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

Rural Utilities Service

Brazos Electric Power Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to the potential environmental impact related to the construction of new headquarters and related facilities proposed by Brazos Electric Power Cooperative, Inc. (Brazos), of Waco, Texas. The proposed project will be located on a site adjacent to Interstate Highway 35 approximately 0.5 miles north of the City of Lorena and 5.7 miles south of the City of Waco in McLennan County, Texas.

RUS has concluded that the environmental impacts from the proposed project would not be significant and that the proposed action is not a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not required.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, room 1246, Ag Box 1569, South Agriculture Building, RUS, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: RUS, in accordance with its environmental policies and procedures, required that Brazos prepare a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed facilities. The BER, which includes input from Federal, State and local agencies and the public, has been adopted as RUS' Environmental Assessment for the project in accordance with 7 CFR 1794.61. RUS has concluded that the BER represents an accurate assessment of the environmental impacts of the project. The proposed project should have no impact on cultural resources, floodplains, wetlands, important farmland, and federally listed or proposed for listing threatened or endangered species or their critical habitat.

Alternatives considered to the project included no action, expansion of Brazos' existing headquarters facility, purchase and renovation of other existing area commercial buildings, and alternative sites. RUS has considered these alternatives and concluded that the project as proposed meets the needs of Brazos to reduce overcrowding at the present facility, provide increased space for equipment storage, consolidate operations done at various existing facilities and provide adequate space for future expansion.

Copies of the BER and FONSI are available for review at RUS at the address provided herein; or can be reviewed at or obtained from the offices of Brazos, 2404–12 LaSalle Avenue, Waco, Texas 76706, telephone (817) 750–6500, during normal business hours.

Dated: August 21, 1995.

Adam M. Golodner,

Deputy Administrator, Program Operations.

[FR Doc. 95–21297 Filed 8–25–95; 8:45 am]

BILLING CODE 3410–15–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled a town meeting and its regular business meetings to take place in St. Louis, Missouri on Tuesday and Wednesday, September 12–13, 1995 at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, September 12, 1995—Town Meeting

9:00 am–10:00 am—Opening Session
10:15 am–12:00 noon—Morning Breakout Sessions
2:00 pm–3:45 pm—Afternoon Breakout Sessions
4:00 pm–5:00 pm—Closing Session

Wednesday, September 13, 1995

9:00 am–9:45 am—Planning and Budget Committee
10:00 am–10:45 am—Executive Committee
11:00 am–12:30 pm—Vision Statement Work Group
2:00 pm–3:30 pm—Board Meeting.

ADDRESSES: The meetings will be held at: Frontenac Hilton, 1335 South Lindbergh Boulevard, St. Louis, Missouri.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 714 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items:

- Approval of the Minutes of the July 12, 1995 Board Meeting.
- Executive Director's Report.
- Vision Statement Work Group Status Report.
- Bylaw Review.
- Rulemaking Development Process.
- Fiscal Year 1995 Final Spending Plan.
- Fiscal Year 1996 Appropriation.
- Fiscal Year 1997 Budget Request.

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 95–21246 Filed 8–25–95; 8:45 am]

BILLING CODE 8150–01–M

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations on Records Release: Correction

AGENCY: Assassination Records Review Board.

ACTION: Notice of formal determinations: correction.

SUMMARY: The Assassination Records Review Board (Review Board) met on August 2 and August 3, 1995, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). The Review Board published a notice document in the Tuesday, August 22, 1995, **Federal Register**, reflecting those determinations. In that notice document 95–20720 beginning on page 43581, make the following corrections:

On page 43582, in the second and third columns of the CIA documents table, make the following corrections:

Record identification No.	Previously published information	Corrected information
104–10015–10359	8, 0, Open in Full, n/a.	6, 2, Postponed in Part, 2017.
104–10018–10103	6, 1, Open in Full, n/a.	6, 1, Postponed in Part, 12/95.
104–10062–10001	19, 19, Open in Full, n/a.	19, 0, Open in Full, n/a.

Dated: August 22, 1995.

T. Jeremy Gunn,

Acting General Counsel.

[FR Doc. 95–21215 Filed 8–25–95; 8:45 am]

BILLING CODE 6820–TD–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Computer System Security and Privacy Advisory Board; Meeting.

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Wednesday, September 13, and Thursday, September 14, 1995, from 9:00 a.m. to 5:00 p.m. The Advisory Board was established by the Computer Security Act of 1987 (P.L. 100–235) to advise the Secretary of Commerce and Director of NIST on security and privacy issues pertaining to Federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on September 13 and 14, 1995, from 9:00 a.m. to 5:00 p.m..

ADDRESSES: The meeting will take place at Wang Federal, Inc., 7900 Westpark Drive, McLean, VA 22102.

AGENDA:

—Welcome and Update
—Overview of Meeting
—Creation of NIST's Information Technology Laboratory, new key escrow developments, and legislative update
—Computer Security Lesson Learned
—Status of Telecommuting
—GITS Security Status
—OMB Appendix III, Resolution of Comments/Current Status
—Security Policy Board Update
—Bankers Trust Proposed Key Escrow Approach
—Issue Update on OTA Report
—Public Participation
—Pending Board Business
—Close.

PUBLICE PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at the time. Written statements should be directed to the Computer Systems Laboratory, Building 225, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the Board by September 8, 1995. Approximately 20 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Board Secretariat, Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, Room B154, Gaithersburg, MD 20899, telephone: (301) 975–3240.

Dated: August 22, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–21254 Filed 8–25–95; 8:45 am]

BILLING CODE 3510–CN–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced of Manufactured in Korea

August 22, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 30, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryforward and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17328, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 22, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on August 30, 1995, you are directed to adjust the limits for the following categories, as provided under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Group I	
200–223, 224–V [2], 224–O [3], 225–229, 300–326, 360–363, 369–O [4], 400–414, 464–469, 600–629, 665–669 and 670–O [5], as a group.	416,163,937 square meters equivalent.
Sublevels within Group I	
200	477,946 kilograms.
201	1,734,113 kilograms.
Group II	
237, 239, 330–359, 431–459 and 630–659, as a group.	556,996,119 square meters equivalent.
Sublevels within Group II	
336	58,327 dozen.
338/339	1,209,665 dozen.
342/642	223,895 dozen.
435	36,344 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[3] Category 224–O: all remaining HTS numbers in Category 224.

[4] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6090 (Category 369-L) and 5601.21.0090.

[5] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–21239 Filed 8–25–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Singapore

August 22, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: August 30, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 338/339 is being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17335, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 22, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on August 30, 1995, you are directed to reduce the limit for the following categories, as provided under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339	1,092,151 dozen of which not more than 674,842 dozen shall be in Category 338 and not more than 750,340 dozen shall be in Category 339.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–21238 Filed 8–25–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans; Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans. This notice also describes the functions of the Commission. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: September 29 and 30, 1995, 8:30 a.m.–5:30 p.m.

ADDRESS: Treasury Department, 1500 Pennsylvania Avenue, NW. Washington, DC 20220; entrance at 15th and F Streets to Cash Room, 2nd floor.

FOR FURTHER INFORMATION CONTACT: Marsha Harper or Sal Lopez, Special Assistant, White House Initiative on Educational Excellence for Hispanic Americans, Department of Education, 600 Independence Avenue, SW., Room

2115, Washington, DC, 20202–3601, Telephone: (202) 401–1411.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanic Americans was established under Executive Order 12900 on February 22, 1994. The Commission was established to advise on Hispanic achievements of the National Goals, as well as other educational accomplishments. This meeting of the Commission is open to the public; however advanced security clearance is required. Please call (202) 622–1500 no later than September 27, 1995 at 5 p.m. to provide date of birth and social security number. Identification will be required at the door. The Agenda includes:

September 29 and 30, 1995, 8:30 a.m. to 5:30 p.m.

Review of FY 1994–95 Commission meetings, hearings, and activities; federal inventory; update on annual report process; discussion of Commission and White House Initiative activities for 1996.

Records are kept of all Commission proceedings, and are available for public inspection at the White House Initiative On Educational Excellence For Hispanic Education at 600 Independence Avenue, SW., Room 2115, Washington, DC 20202–3601 from the hours of 9 a.m. to 5 p.m.

Dated: August 22, 1995.

G. Mario Moreno,

Assistant Secretary, Office of Intergovernmental and Interagency Affairs.

[FR Doc. 95–21237 Filed 8–25–95; 8:45 am]

BILLING CODE 4000–01–M

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board, Education.

ACTION: Teleconference.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Committee on Research Priorities, Educational Research Policy and Priorities Board. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE AND TIME: September 12, 1995, 2 p.m. to 3:30 p.m.

ADDRESS: 555 New Jersey Avenue, NW, Room 510, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: John Christensen, Designated Federal Official, National Educational Research Policy and Priorities Board, 555 New Jersey Avenue, NW, Washington, DC 20208–7564. Telephone: (202) 219–2065; Fax: (202) 219–1528.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (the Act). The Board works collectively with the Assistant Secretary for the Office of Educational Research and Improvement (the Office) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The Act directs that the Assistant Secretary work collaboratively with the Board to develop a research priorities plan which shall recommend priorities for the investment of resources for the Office of Educational Research and Improvement. The Board has designated the Committee to work on its behalf in these matters in the interim between full meetings of the Board. The meeting of the Committee on Research Priorities is open to the public. The agenda for the meeting includes a review and discussion of a draft of the 1st report on research priorities.

A final agenda will be available from the Board's office on September 5, 1995.

Records are kept of all Board proceedings, and are available for public inspection at the Office of the National Educational Research Policy and Priorities Board, 555 New Jersey Avenue, NW, Washington, DC 20208–7564.

Dated: August 22, 1995.

Sharon P. Robinson,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 95–21222 Filed 8–25–95; 8:45 am]

BILLING CODE 4000–01–M

Recognition of Accrediting Agencies

AGENCY: Department of Education.

ACTION: Request for comments on agencies appealing previous recommendations of the National Advisory Committee on Institutional Quality and Integrity.

DATES: Commentors should submit their written comments by September 27, 1995 to the address below.

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein, Director, Accreditation and State Liaison Division, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3915 ROB–3, Washington, DC 20202–5244, telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

SUBMISSION OF THIRD-PARTY COMMENTS: The Secretary of Education is required by law to publish a list of accrediting agencies that he determines to be reliable authorities regarding the quality of education or training offered by institutions or programs they accredit. The National Advisory Committee on Institutional Quality and Integrity (the ''Advisory Committee'') advises the Secretary on specific accrediting agencies that seek to be recognized by the Secretary.

The agencies listed in this notice have previously been reviewed by the Advisory Committee and have appealed the Advisory Committee's recommendations concerning their recognition status, as provided for in 34 CFR 602.13 of the regulations governing the recognition of accrediting agencies. The Secretary has reviewed each agency's appeal and has decided to remand the three cases to the Advisory Committee for review. The Advisory Committee will consider these cases at its November 28–30, 1995 meeting.

The purpose of this notice is to invite interested third parties to present written comments on the three agencies whose appeals will be reviewed by the Advisory Committee. In order for Department staff to give full consideration to the comments received, the comments must arrive at the address listed above not later than September 27, 1995. Comments must relate to those of the Secretary's Criteria for the Recognition of Accrediting Agencies that were identified by the Advisory Committee as the bases for the Committee's original recommendations, as cited below. All written comments received by the Department in response to this notice will be considered by both the Advisory Committee and the Secretary.

A subsequent **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests for oral presentation before the Advisory Committee on these and other agencies being reviewed at that meeting. That notice, however, does not constitute another call for written comment. This notice is the only call for written comment on the three agencies appealing previous recommendations of the Advisory Committee.

Appeal of a Recommendation To Withdraw Recognition

The agencies listed below were recommended for withdrawal of recognition by the Advisory Committee

at its June 1994 meeting because, in the opinion of the Advisory Committee, they did not meet the requirement contained in section 496(m) of the Higher Education Act (HEA) of 1965, as amended, and 34 CFR 602.1(b) of the Secretary's Criteria for Recognition. Under 34 CFR 602.1(b), ''the Secretary only grants recognition to those accrediting agencies that accredit (i) institutions of higher education, provided that accreditation by the agency is a required element in enabling those institutions to establish eligibility to participate in HEA programs; or (ii) institutions of higher education or higher education programs, provided that accreditation by the agency is a required element in enabling those institutions or programs to establish eligibility to participate in other programs administered by the Department or by other Federal agencies.''

1. American Library Association, Committee on Accreditation.

2. Association of Collegiate Business Schools and Programs.

Appeal of a Recommendation To Deny an Agency's Requested Expansion of Scope

For the agency listed below, the Advisory Committee recommended granting continued recognition for the accreditation and preaccreditation of non-degree granting vocational education institutions. It also recommended granting the agency's request for an expansion of geographical scope of recognition from regional to national. The Advisory Committee, however, recommended not granting the agency's requested expansion of scope to include prebaccalaurate degree-granting institutions that awarded an applied associate's degree. In the Committee's view, the agency did not have the requisite experience to accredit such institutions, as required by 34 CFR 602.22, nor did it have an appropriate emphasis on the ''academic'' component of a prebaccalaurate degree, as required by 34 CFR 602.24(b)(1)(iii). The agency appealed the latter recommendation of the Advisory Committee.

1. Council on Occupational Education (formerly the Commission on Occupational Education Institutions of the Southern Association of Colleges and Schools)

Public Inspection of Petitions and Third-Party Comments

All third-party comments received in response to this call for comment, as well as the three agencies' original petitions and supporting documentation, the Department staff analyses of those petitions, and the agencies' appeals materials, will be available for public inspection at the U.S. Department of Education, ROB–3, Room 3915, 7th and D Streets, SW., Washington, DC 20202–5244, telephone (202) 708–7417 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–21241 Filed 8–25–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. F–078]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of the Department of Energy Furnace Test Procedures From York International

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to York International (York) from the existing Department of Energy (the Department) test procedure regarding blower time delay for the company's P2UR and PBLU lines of condensing furnaces.

Today's notice also publishes a ''Petition for Waiver'' from York. York's Petition for Waiver requests the Department to grant relief from its furnace test procedure relating to the blower time delay specification. York seeks to test using a blower delay time of 30 seconds for its P2UR, and PBLU lines of condensing furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: The Department will accept comments, data, and information not later than September 27, 1995.

ADDRESSES: Written comments and statements shall be sent to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F–078, Mail Stop EE–43, Room 1J–108, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7574.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9138

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires the Department to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, the Department further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned the Department for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily, test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially

inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until the Department issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On June 26, 1995, York filed an Application for Interim Waiver regarding blower time delay. York's Application seeks an Interim Waiver from the Department's test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, York requests the allowance to test using a 30-second blower time delay when testing its P2UR, and PBLU lines of condensing furnaces. York states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an overall furnace AFUE of approximately 1.5 percent points improvement. Since the Department's current test procedures do not address this variable blower time delay, York asks that the Interim Waiver be granted.

The Department has published a Notice of Proposed Rulemaking on August 23, 1993, (58 FR 44583) to amend the furnace test procedure, which addresses the above issue.

Previous waivers for this type of time blower delay control have been granted by the Department to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, 57 FR 34560, August 5, 1992; 59 FR 30577, June 14, 1994, and 59 FR 55470, November 7, 1994; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991, and 59 FR 30579, June 14, 1994; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, 57 FR 54230, November 17, 1992, and 59 FR 30575, June 14, 1994; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992, and 59 FR 46968, September 13, 1994; Bard Manufacturing Company, 57 FR 53733, November 12, 1992, and 59 FR 30578, June 14, 1994; and York International Corporation, 59 FR 46969, September 13, 1994, and 60 FR 100, January 3, 1995. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon the Department having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, the Department is granting York an Interim Waiver for its P2UR and PBLU lines of condensing furnaces. Pursuant to paragraph (e) of Section 430.27 of the Code of Federal Regulations Part 430, the following letter granting the Application for Interim Waiver to York was issued.

Pursuant to paragraph (b) of 10 CFR Part 430.27, the Department is hereby publishing the ''Petition for Waiver'' in its entirety. The petition contains no confidential information. The Department solicits comments, data, and information respecting the petition.

Issued in Washington, DC, August 20, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Department of Energy

August 21, 1995.

Mr. Michael B. Eberlein, P.E.,

Engineering Manager—Furnace Products, Unitary Products Group, York International, P.O. Box 4022, Elyria, OH 44036.

Dear Mr. Eberlein: This is in response to your June 26, 1995, Application for Interim Waiver and Petition for Waiver from the Department of Energy (the Department) test procedure regarding blower time delay for York International (York) P2UR and PBLU lines of condensing furnaces.

Previous waivers for this type of timed blower delay control have been granted by the Department to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, 57 FR 34560, August 5, 1992, 59 FR 30577, June 14, 1994, and 59 FR 55470, November 7, 1994; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, 57 FR 22222, May 27, 1992, and 58 FR 68138, December 23, 1993; Lennox Industries, 55 FR 50224, December 5, 1990, 57 FR 49700, November 3, 1992, 58 FR 68136, December 23, 1993, and 58 FR 68137, December 23, 1993; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991, and 59 FR 30579, June 14, 1994; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, 57 FR 38830, August 27, 1992, 58 FR 68131, December 23, 1993, 58 FR 68133, December 23, 1993 and 59 FR 14394, March 28, 1994; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, 57 FR 23392, June 3, 1992, and 58 FR 68130, December 23, 1993; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, 57 FR 27970, June 23, 1992 and 59 FR 12586, March 17, 1994; The Ducane Company Inc., 56 FR 63943, December 6, 1991, 57 FR 10163, March 24, 1992, and 58 FR 68134, December 23, 1993; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, 57 FR 54230, November 17, 1992, and 59 FR 30575, June 14, 1994; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992, and 59 FR 46968, September 13, 1994; Bard Manufacturing Company, 57 FR 53733, November 12, 1992, and 59 FR 30578, June 14, 1994; and York International Corporation, 59 FR 46969, September 13, 1994, and 60 FR 100, January 3, 1995. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

York's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage York will likely experience absent a favorable determination on its application.

However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon the Department having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, York's Application for an Interim Waiver from the Department test procedure for its P2UR and PBLU lines of condensing furnaces regarding blower time delay is granted.

York shall be permitted to test its P2UR, and PBLU lines of condensing furnaces on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82, with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days, or until the Department acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

York Central Environmental Systems; York International

June 26, 1995.

Assistant Secretary, Conservation & Renewable Energy

United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Subject: Petition for Waiver and Application for Interim Waiver.

Gentlemen: This is a Petition for Waiver and Application for Interim Waiver submitted pursuant to Title 10 CFR 430.27, as amended 14 November 1986. Waiver is requested from the test procedures for measuring the Energy Consumption of Furnaces found in Appendix N of Subpart B to Part 430, specifically the section requiring a 1.5 minute delay between burner ignition and start-up of the circulating air blower.

York International requests a waiver from the specified 1.5 minute delay, and seeks authorization in its furnace efficiency test procedures and calculations to utilize a fixed timing control that will energize the circulating air blower 30 seconds after the gas valve opens. A control of this type with a fixed 30 second blower on-time will be utilized in our P2UR an PBLU lines of condensing furnaces.

The current test procedure does not credit York for additional energy savings that occur when a shorter blower on-time is utilized. Test data for these furnaces with a 30 second delay indicate that the overall furnace AFUE will increase approximately 1.5 percentage points compared to the same furnace when tested with the 1.5 minute delay. Copies of the confidential test data confirming these energy savings will be forwarded to you upon request.

York International is confident that this waiver will be granted, as similar waivers have been granted in the past to Coleman Company, Magic Chef Company, Rheem Manufacturing, the Trane Company, Carrier Corporation, Lennox Industries, Amana Refrigeration, Goodman Manufacturing Company and others.

Manufacturers that domestically market similar products are being sent a copy of this Petition for Waiver and Application for Interim Wavier.

Sincerely,

Michael B. Eberlein, P.E.

Engineering Manager—Furnace Products, Unitary Products Group.

[FR Doc. 95–21284 Filed 8–25–95; 8:45 am]

BILLING CODE 6450–01–P–M

Federal Energy Regulatory Commission

[Docket No. EG95–77–000, et al.]

Cortes Operating Company, S.A. de C.V., et al.; Electric Rate and Corporate Regulation Filings

August 21, 1995.

Take notice that the following filings have been made with the Commission:

1. Cortes Operating Company, S.A. de C.V.

[Docket No. EG95–77–000]

Take notice that on August 11, 1995, Cortes Operating Company, S.A. de C.V. (''Cortes'') (c/o Lynn N. Hargis, Chadbourne & Parke, 1101 Vermont Avenue, N.W., Suite 1000, Washington, D.C. 20005), 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.

Cortes is a Honduras company formed to operate an electric generating facility located in Puerto Cortes, Honduras.

Comment date: September 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.

2. Electricidad de Cortes S de R.L. de C.V.

[Docket No. EG95–78–000]

Take notice that on August 11, 1995, Electricidad de Cortes, S. de R.L. de C.V. (ELCOSA) (c/o Lynn N. Hargis, Chadbourne & Parke, 1101 Vermont Avenue, N.W., Suite 1000, Washington, D.C. 20005), 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.

ELCOSA is a Honduras company formed to operate an electric generating facility located in Puerto Cortes, Honduras.

Comment date: September 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.

3. Tenaska Power Services Company

[Docket No. ER94–389–004]

Take notice that on August 10, 1995, Tenaska Power Services Company filed certain information as required by the Commission's May 26, 1994, order in Docket No. ER94–389–000. Copies of

the Tenaska Power's informational filing are on file with the Commission and are available for public inspection.

4. Electrade Corporation

[Docket No. ER94–1478–004]

Take notice that on July 25, 1995, Electrade Corporation filed certain information as required by the Commission's October 12, 1994, order in Docket No. ER94–1478–000. Copies of the Electrade Corporation's informational filing are on file with the Commission and are available for public inspection.

5. Maine Public Service Company

[Docket No. ER95–1414–000]

Take notice that on July 25, 1995, Maine Public Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: September 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1521–000]

Take notice that on August 10, 1995, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an Agreement between Con Edison and Williams Power Trading Company for the sale and purchase of energy and capacity.

Comment date: September 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1522–000]

Take notice that on August 10, 1995, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an Agreement between Con Edison and Central Maine Power Company for the sale of energy and capacity.

Comment date: September 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1523–000]

Take notice that on August 10, 1995, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an Agreement between Con Edison and Commonwealth Electric Company for the sale of energy and capacity.

Comment date: September 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Northern Indiana Public Service Company

[Docket No. ER95–1524–000]

Take notice that on August 10, 1995, Northern Indiana Public Service Company, tendered for filing an Interchange Agreement between Northern Indiana Public Service Company and InterCoast Power Marketing Company.

The Interchange Agreement allows for General Purpose transactions and Negotiated Capacity transactions. General Purpose transactions are economy based energy transactions which may be made available from the supplying party's resources from time to time. Negotiated Capacity transactions provide capacity and energy to the buyer, customized to the specific needs at the time of the reservation.

Copies of this filing have been sent to InterCoast Power Marketing Company and to the Indiana Utility Regulatory Commission.

Comment date: September 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Madison Gas and Electric Company

[Docket No. ER95–1525–000]

Take notice that on August 11, 1995, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with National Gas & Electric L.P. under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the filing date.

Comment date: September 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Delmarva Power & Light Company

[Docket No. ER95–1526–000]

Take notice that on August 11, 1995, Delmarva Power & Light Company (Delmarva), tendered for filing as an initial rate under Section 205 of the Federal Power Act and Part 35 of the Regulations issued thereunder, a supplemental Agreement between Delmarva and LG&E Power Marketing (LPM) dated July 31, 1995.

Delmarva states that the Agreement set forth the terms and conditions for the sale or purchase of short-term energy which it expects to be available from time to time and which will be economically advantageous to both Delmarva and LPM. Delmarva requests that the Commission waive its standard notice period and allow this Agreement to become effective on June 23, 1995.

Delmarva states that a copy of this filing has been sent to LPM and will be furnished to the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Comment date: September 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Montaup Electric Company

[Docket No. ER95–1527–000]

Take notice that on August 11, 1995, Montaup Electric Company (Montaup) filed: (1) executed service agreements to furnish, and Central Maine Power Company (CMP) and CMEX Energy, Inc. (CMEX) to purchase, capacity and energy pursuant to the terms and conditions of Montaup's FERC Electric Tariff, Original Volume No. III; and (2) executed service agreements for the sale of system capacity and associated energy pursuant to the terms and conditions of Montaup's FERC Electric Tariff, Original Volume No. IV. The latter service agreements allow Buyers, through certificates of concurrence, to provide capacity from one of Buyers' units, which enables Montaup to make a system sale while maintaining its minimum monthly system capability required under the present NEPOOL Agreement.

Montaup and CMP and CMEX (Buyers) understand that transactions under the service agreements are purely voluntary and will be entered into only if mutually beneficial and agreeable. Montaup requests a waiver of the sixty-day notice requirement so that the service agreements may become effective as of July 12, 1995 for the CMP agreements and July 27, 1995 for the CMEX agreements.

Comment date: September 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Southern California Edison Company

[Docket No. ER95–1530–000]

Take notice that on August 11, 1995, Southern California Edison Company (Edison), tendered for filing a letter agreement dated June 16, 1995 (Letter Agreement) between Edison and the City of Anaheim (Anaheim) as an initial rate schedule.

The Letter Agreement sets forth the terms and conditions by which Edison will provide Anaheim with a right of first refusal for transmission service between the midpoint of the Victorville-Lugo 500 Kv transmission line (Victorville-Lugo Midpoint) and Lewis Substation.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER95–1531–000]

Take notice that on August 14, 1995, PECO Energy Company (PECO), filed a Service Agreement dated August 3, 1995, with Citizens Lehman Power Sales (Citizens) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Citizens as a customer under the Tariff.

PECO requests an effective date of August 3, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to Citizens and to the Pennsylvania Public Utility Commission.

Comment date: September 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. The Dayton Power and Light Company

[Docket No. ER95–1532–000]

Take notice that on August 14, 1995, The Dayton Power and Light Company (Dayton), tendered for filing an executed Master Power Sales Agreement between Dayton and PECO Energy Company (PECO).

Pursuant to the rate schedules attached as Exhibit B to the Agreement, Dayton will provide to PECO power and/or energy for resale. Dayton and PECO are currently parties to a Sales Agreement for the sale of power and energy to Dayton from PECO approved by the Commission in Docket No. ER95–358–000.

Comment date: September 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER95–1534–000]

Take notice that on August 14, 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 Old Dominion Electric Cooperative, dated August 7, 1995. This Service Agreement specifies that Old Dominion Electric Cooperative 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 Old Dominion Electric Cooperative 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 August 7, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: September 5, 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. 95–21262 Filed 8–25–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–677–000, et al.]

Colorado Interstate Gas Company, et al.; Natural Gas Certificate Filings

August 21, 1995.

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP95–677–000]

Take notice that on August 9, 1995, Colorado Interstate Gas Company (CIG) Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP95–677–000 a request pursuant to Sections 157.205(b) and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205(b) and 157.212) for authorization to construct new delivery facilities pursuant to CIG's blanket certificate issued in Docket No. CP83–21–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to construct the Alkali Pond delivery facilities in Sweetwater County, Wyoming, for two end users, FMC Corporation (FMC) and General Chemical. CIG states that the facilities would consist of approximately 3.5 miles of 8-inch pipeline with metering for delivery to FMC and approximately 8.6 miles of 6-inch pipeline for metering extending downstream of the 8-inch pipeline for delivery to General Chemical. It is stated that the new facilities have an estimated cost of approximately $1.4 million.

It is further stated that the proposed facilities would be capable of delivering approximately 30 Mmcf per day of natural gas to FMC and approximately 20 Mmcf per day to General Chemical.

Comment date: October 5, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Texas Eastern Transmission Corporation, ANR Pipeline Company

[Docket No. CP95–680–000]

Take notice that on August 10, 1995, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642 and ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, jointly, filed in Docket No. CP95–680–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain firm exchange and transportation services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The services, it is said, were authorized by Order issued April 16, 1980 in Docket No. CP80–82–000 and performed pursuant to Texas Eastern's Rate Schedule X–109 and ANR's Rate Schedule X–97.

It is stated that the services were once required to permit the exchange of gas between Texas Eastern and ANR in the West Cameron Area, South Marsh Island Area and at other mutually agreeable delivery points. It is further said that the exchange and transportation authority is no longer required, as the exchange agreements have been terminated.

Comment date: September 11, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company

[Docket No. CP95–688–000]

Take notice that on August 14, 1995, Northern Natural Gas Company (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–688–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to abandon certain facilities under its blanket certificate issued in Docket No. CP82–401–000 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.

Northern requests permission and approval to abandon a town border station and appurtenant facilities located in Marshall County, Iowa. Northern states that it has been advised by IES Utilities that gas service downstream of the town border station has been discontinued and that the facility may be removed. Northern states that it has determined that no other use exists for the town border station and appurtenant facilities.

Comment date: October 5, 1995, in accordance with Standard Paragraph G at the end of this notice.

4. Blue Lake Gas Storage Company

[Docket No. CP95–690–000]

Take notice that on August 15, 1995, Blue Lake Gas Storage Company (Blue Lake), 500 Renaissance Center, Detroit, Michigan 48423, filed in Docket No. CP95–690–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) requesting a blanket certificate of public convenience and necessity and permission and approval to abandon, authorizing Blue Lake to engage in any of the activities specified in Subpart F of Part 157 of the Commission's Regulations, as may be amended from time to time, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Blue Lake is a ''natural gas company'' within the meaning of the NGA and as determined by the Commission in Docket No. CP91–2704–000. Blue Lake asserts that it has no outstanding budget-type certificates. Blue Lake states that it does have currently effective storage rate schedules, providing firm storage service under Rate Schedule FS and interruptible storage service under Rate Schedule IS.

Comment date: September 11, 1995, in accordance with Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Company

[Docket No. CP95–692–000]

Take notice that on August 17, 1995, Northern Natural Gas Company (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–692–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to install and operate a new delivery point under its blanket certificate issued in Docket No. CP82–401–000 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.

Northern requests authorization to install and operate a new delivery point to permit delivery of natural gas to IES Utilities, Inc. (IES) for delivery to the Mesquakie Casino town border station in Tama County, Iowa. Northern states IES requested the proposed delivery point to accommodate service into an area previously not served by natural gas. Northern further states that the estimated quantities to be delivered to IES are 800 MMBtu on a peak day and 225,000 MMBtu on an annual basis. Northern states that it would not increase IES' existing firm entitlement under existing service agreements.

Northern states that the estimated cost to install the delivery point is $46,000. Northern further states that IES would reimburse Northern for the total construction cost.

Comment date: October 5, 1995, in accordance with Standard Paragraph G at the end of this notice.

6. Koch Gateway Pipeline Company

[Docket No. CP95–694–000]

Take notice that on August 18, 1995, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP95–694–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon in place facilities used to serve a farm tap customer of Entex, Inc., a local distribution company, under the blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7(b) 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.

Koch Gateway proposes to abandon in place approximately four miles of four-inch pipeline in San Patricio County, Texas. It is indicated that the line currently serves only one customer, Ms Eva Whitely, a farm tap customer of Entex, and that Ms. Whitely has consented to changing her supply source to propane. It is also stated that the service level of the transportation agreement between Koch Gateway and Entex will not be affected by the abandonment.

Comment date: October 5, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR

385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21261 Filed 8–25–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. RP95–197–000 and RP95–197–001]

Transcontinental Gas Pipe Line Corporation; Notice Rescheduling Informal Settlement Conference

August 22, 1995.

Take notice that an informal settlement conference scheduled for Tuesday, September 12, 1995, in this proceeding is rescheduled for Thursday, September 14, 1995, at 10:00 a.m., for the purpose of exploring the possible settlement of the above-referenced proceeding. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations. *See* 18 CFR 385.214.

For additional information, please contact Warren C. Wood at (202) 208–2091 or Donald A. Heydt at (202) 208–0740.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21234 Filed 8–25–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5285–2]

Acid Rain Program: Notice of Exception to Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of exception to regulations (40 CFR Part 72).

SUMMARY: Title IV of the Clean Air Act authorizes the Environmental Protection Agency (EPA) to establish the Acid Rain Program. During Phase I (1995–1999) of the program, units subject to sulfur dioxide emissions limitations are required to account for any emissions resulting from reduced utilization of the units and shifting of electric generation from the units to other units or generators. Each unit is included in a dispatch system, and the accounting for reduced utilization is conducted on a dispatch-system basis. Under § 72.33(b), a unit may submit an identification of dispatch system, i.e., a request to establish a given group of units as a dispatch system. The regulation requires the submission to be made by January 30 of the first year for which the dispatch system is to be used for reduced utilization accounting.

The Agency hereby gives notice that on May 3, 1995, Midwest Power System, Inc. submitted an identification of dispatch system to take effect starting in 1995 and a request for an exception to the January 30 submission deadline. By letter dated May 31, 1995, the Agency granted the request and accepted the identification of dispatch system. The May 31, 1995 letter sets forth the basis for granting the request.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, at (202) 233–9089, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; Dwight C. Alpern, Attorney-advisor, at (202) 233–9151 (same address); or the Acid Rain Hotline at (202) 233–9620.

Dated: August 17, 1995.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 95–21280 Filed 8–25–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5287–1]

A Public Meeting on Streamlining Promulgation of Analytical Methods at 40 CFR Part 136 and Workshop on Trace Metals Analysis

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Science and Technology within EPA's Office of Water is conducting a public meeting on approaches to streamlining the proposal and promulgation of analytical methods at 40 CFR Part 136 under Section 304(h) of the Clean Water Act; and the Office of Water is also sponsoring a workshop to aid attendees in resolving the problems associated with the sampling and analysis of trace metals, including the difficulty in precluding contamination.

DATES: EPA will conduct the Trace Metals Workshop on Wednesday, September 27, 1995; and the public meeting on Streamlining will be held the following day on Thursday, September 28, 1995. Workshop Registration will begin at 10:00 am. The workshop will be conducted from 12:00 pm to 5:30 pm. The Public meeting will be held from 9:00 am to 5:30 pm. A specific agenda for the public meeting will be published in an upcoming notice.

ADDRESSES: The Trace Metals Workshop will be held at the Crowne Plaza Hotel-Seattle, Seattle, Washington. The public meeting on Streamlining will be held at the Federal Building in Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Meeting arrangements are being coordinated by DynCorp EENSP. For information on registration contact Cindy Simbanin, 300 N. Lee Street, Suite 500, Alexandria, VA 22314. Phone: (703) 519–1386. Facsimile number: (703) 684–0610. Space is limited and reservations are being taken on a first come, first served basis. No fees will be charged to attend.

Hotel reservations may be made by contacting the Crowne Plaza Hotel in Seattle at (800) 521–2762. Guest rates are $83 single and $106 double occupancy, including tax. Reservations must be made by 9/08/95, and you must specify that you are attending the EPA Workshop to qualify for the group rate. Accommodations are limited, so please make your reservations early.

SUPPLEMENTARY INFORMATION: The USEPA Office of Water's interest in trace metals determinations has been driven by the development of ambient water quality criteria (WQC) in response to Congressional mandates in the 1987 Water Quality Act. Ambient water quality criteria require determinations of metals at levels significantly lower than those required by technology-based effluent limits or achievable by routine environmental laboratory analyses.

The Office of Water's purpose in sponsoring this workshop is to assist State and Regional authorities, regulated community, and commercial laboratories in understanding the requirements and techniques necessary to determine trace metals at EPA's ambient WQC levels. This workshop

will focus on sampling and analysis techniques, data review, and quality assurance measures necessary to support reliable trace metals measurements for data gathering and compliance monitoring purposes.

The objective of the public meeting on Streamlining is to outline plans for method flexibility and for streamlining proposal and promulgation of new methods at 40 CFR Part 136 under Section 304(h) of the Clean Water Act.

EPA has promulgated analytical methods at 40 CFR Part 136 as needed to support monitoring under the National Pollutant Discharge Elimination System (NPDES). Methods approved for use at 40 CFR Part 136 have been developed by EPA, by industrial associations, and by other government agencies. In the past, the methods proposal and promulgation process has been cumbersome, and has by design limited the contribution of emerging analytical technologies.

In response to the Administration's Environmental Technology Initiative, EPA desires to increase method flexibility in existing methods and to streamline the proposal and promulgation of new methods to take advantage of these emerging technologies.

The Subjects to be discussed at the meeting are: (1) Flexibility—unlimited, limited, and none, and the advantages of each, (2) standardization of quality control to support determination of method equivalency, (3) streamlined proposal and promulgation of new methods to take advantage of emerging analytical technologies, (4) harmonization of wastewater methods with other Agency methods to allow standardization of methods, and (5) standardized data elements for reporting to allow access to Agency databases in a standardized data format.

Dated: August 23, 1995.

James Hanlon,

Acting Director, Office of Science and Technology.

[FR Doc. 95–21282 Filed 8–25–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5286–5]

Availability of State Deferral Guidance and Response to Comments

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Agency is informing the public of the availability of two documents concerning the newly established Superfund State deferral program: ''Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions'' (OSWER Directive 9375.6–11), issued on May 3, 1995; and ''Response to Comments on the 1988 Proposed NCP Deferral Policy Concept'' (OSWER Directive 9375.6–11A), issued on May 3, 1995.

FOR FURTHER INFORMATION CONTACT: The guidance (Order Number PB95–963223) and response to comments (Order Number PB95–963225) are available for $17.50 each (plus shipping and handling) through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. For further information or to order documents by phone, call 703–487–4650 for Regular Service, or 800–553–NTIS for Rush Service.

SUPPLEMENTARY INFORMATION:

A. Background

The preamble to the 1988 proposed National Oil and Hazardous Substance Pollution Contingency Plan (NCP) announced that the Environmental Protection Agency (EPA) was considering expanding the existing policy of deferring sites from inclusion on the National Priorities List (NPL). The Agency requested and received public comments on its proposal to defer sites to other Federal authorities, States, and/or potentially responsible parties (PRPs). The 1990 preamble to the final NCP stated that EPA would not decide the deferral policy issue at that time, but that should the Agency ''decide in the future to consider establishing an expansion to deferral policies,'' it would respond then to the comments received (*See* 54 FR 8667, Mar. 8, 1990).

B. Summary of Guidance Document

Based on the EPA June 23, 1993, ''Superfund Administrative Improvements Final Report'' (OSWER Directive 9200.0–14–2), EPA established an initiative to ''Enhance State Role.'' Under this initiative, the Agency developed a guidance on deferring consideration of certain sites for listing on the NPL, while interested States, Territories, Commonwealths, or federally-recognized Indian Tribes compel and oversee response actions conducted and funded by PRPs. This ''Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions'' is now complete and is being issued under the 1995 Superfund Administrative Reforms (February 13, 1995, Elliott Laws and Steven Herman memorandum, ''Announcement of Superfund Administrative Reforms'').

The guidance document has several components to ensure that responses are protective of human health and the environment, and foster public involvement while balancing competing needs for flexibility and accountability. The guidance is divided into sections which address: criteria applicants should meet to participate in the program; criteria for determining which sites are eligible for deferral; provisions for cleanup levels to be achieved at deferred sites; procedural requirements; and provisions for EPA oversight, financial assistance, community participation, and response completion or termination. A ''question and answer'' appendix supplements the guidance. Under the deferral program:

—NPL caliber sites may be deferred to States or Tribes for response actions that will be conducted under State or Tribal authority (Federal facilities or sites listed on the NPL are not eligible for deferral);

—response actions generally will be conducted by viable, cooperative PRPs with State or Tribal oversight;

—response actions must be protective of human health and the environment and meet State or Tribal and Federal applicable requirements;

—a site may not be deferred if the affected community has significant, valid objections;

—the level of EPA oversight of State actions at deferred sites will be minimal; and

—once a deferral response is complete, the site will be removed from CERCLIS and EPA will have no further interest in considering the site for the NPL unless it receives new information of a release or potential release that poses a significant threat to human health or the environment.

C. Summary of Response Document

The ''Response to Comments on the 1988 Proposed NCP Deferral Policy Concept'' fulfills the Agency's commitment to respond to the comments EPA received regarding the deferral policy concept introduced in the 1988 proposed NCP. The response addresses the 1988 proposal to defer sites to State authorities and does not consider proposed deferral policies to other authorities or PRPs which are not addressed by the guidance. Major comments are summarized by subject, and responses reflect EPA policy presented in the guidance.

Dated: August 17, 1995.

Elliott P. Laws,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 95–21278 Filed 8–25–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5285–4]

Proposed General NPDES Permit for Concentrated Animal Feeding Operations (CAFO) in Idaho

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Notice of a proposed general permit.

SUMMARY: This proposed reissuance of the CAFO general permit is intended to regulate CAFO activities in the state of Idaho. When issued, the proposed permit will establish limitations, standards, prohibitions and other conditions for covered facilities. These conditions are based on existing national effluent guidelines and material contained in the administrative record. A description of the basis for the conditions and requirements of the proposed general permit is given in the fact sheet published below.

Part I.C. of the proposed permit identifies the facilities which can qualify for coverage under this permit. Parts I.C.7. and 8. specify that facilities that discharge directly or through a man-made device into waters of the United States qualify for coverage under this permit. The Region 10 office of EPA requests comment on whether the universe of facilities to be covered should be expanded to include those facilities which have the potential to discharge.

EXECUTIVE ORDER 12291: The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to Section 8[b] of that order.

PUBLIC COMMENT PERIOD: Interested persons may submit comments on the draft general permit to EPA, Region 10 at the address below. Comments must be received in the regional office on or before October 27, 1995.

PUBLIC HEARINGS: Public hearings on the permit conditions are scheduled in Boise and Twin Falls, Idaho. The Boise hearing will be held on Wednesday, September 27, 1995, in the 1st Floor Conference Center at the Division of Environmental Quality, Earl Chandler Building, 1410 N Hilton, Boise, Idaho, from 6:30 pm until all persons have been heard. The Twin Falls hearing will be held on September 28, 1995 in Room 117 of the Sheilds Building at the College of Southern Idaho, 315 Falls Avenue, Twin Falls, Idaho, also from 6:30 pm until all persons have been heard. Persons interested in obtaining information on the hearings should contact Joe Roberto at the address below.

REQUEST FOR COVERAGE: Written request for coverage and authorization to discharge under the general permit shall be provided to EPA, Region 10, as described in Part I.D. of the draft permit. Authorization to discharge requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to the operation.

ADDRESSES: Comments on the proposed general permit should be sent to Joe Roberto; U.S. EPA, Region 10; 1200 Sixth Avenue WD–135; Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Joe Roberto at the Seattle address above or by telephone at (206) 553–1669.

REGULATORY FLEXIBILITY ACT: After review of the facts presented in the notice printed above, I hereby certify pursuant to the provision of 5 U.S.C. 605(b) that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

Dated: August 17, 1995.

Gregory L. Kellogg,

Acting Director, Water Division.

Fact Sheet

United States Environmental Protection Agency (EPA), Region 10, 1200 Sixth Avenue, WD–134, Seattle, Washington 98101, (206) 553–1214.
General Permit No.: ID–G–01–0000.

Proposed Reissuance of a General National Pollutant Discharge Elimination System (NPDES) Permit To Discharge Pollutants Pursuant to the Provisions of the Clean Water Act (CWA)

Idaho Concentrated Animal Feeding Operations (CAFO)

This Fact Sheet includes (a) the tentative determination of the EPA to reissue the general permit, (b) information on public comment, public hearing and appeal procedures, (c) the description of the industry and proposed discharges, and (d) other conditions and requirements.

Persons wishing to comment on the tentative determinations contained in the proposed general permit reissuance may do so by the expiration date of the Public Notice. All written comments should be submitted to EPA as described in the Public Comments Section of the attached Public Notice.

After the expiration date of the Public Notice, the Director, Water Division, will make final determinations with respect to the permit reissuance. The tentative determinations contained in the draft general permit will become final conditions if no substantive comments are received during the public notice period.

The permit will become effective 30 days after the final determinations are made, unless a request for an evidentiary hearing is submitted within 30 days after receipt of the final determinations.

The proposed NPDES general permit and other related documents are on file and may be inspected at the above address any time between 8:30 a.m. and 4 p.m., Monday through Friday. Copies and other information may be requested by writing to EPA at the above address to the attention of the Water Permits Section, or by calling (206) 553–1214. This material is also available from the EPA Idaho Operations Office, 1435 North Orchard Street, Boise, Idaho 83706.

Table of Contents

I. Applicants
II. Receiving Water
III. Background Information
A. Description of the Industry
B. What Pollutants are Being Discharged?
C. Why is a General Permit Being issued?
IV. Permit Coverage
A. Who needs to be covered by this permit?
B. What constitutes a discharge?
C. How to determine if an animal feeding operation is a CAFO?
1. Animal Feeding Operation
2. CAFO Criteria
3. Animal Units
D. Permit Coverage
E. Permit Expiration
V. Permit Requirements
A. Basis of Discharge Limitations
1. Statutory Requirements
2. Technology-Based Limitations
3. Water Quality Based Limitations
B. Best Management Practices (BMP)
1. Design of Control Facilities
2. Facility Expansion
3. Chemical Handling
4. Access Restriction
5. Land Application
C. Prohibitions
VI. Basis for Monitoring and Reporting Requirements
A. Notice of Intent
B. Discharge Notification
VII. Limitations of the General Permit
A. Limitations on Coverage
B. Individual Permits
VIII. Other Requirements
A. Endangered Species Act
B. State Certification

Technical Information

I. Applicants

This permit is applicable for facilities classified as Concentrated Animal Feeding Operations (CAFOs) in the state of Idaho.

II. Receiving Water

Receiving waters are the surface waters or waters of the United States as defined in 40 CFR 122.2 in which wastewater from CAFOs are discharged. This includes rivers, streams, creeks, and their tributaries. EPA interprets this definition to include irrigation ditches, laterals, and canals which flow into waters of the United States.

III. Background Information

A. Description of the Industry

The activity associated with CAFOs is the confinement of animals, including poultry but excluding ducks, for meat, milk, or egg production, or stabling, in pens or houses, where the animals are fed or maintained at the place of confinement [40 CFR 412.11(b)].

B. What Pollutants Are Being Discharged?

The most commonly recognized contaminants from CAFOs include biochemical oxygen demand (BOD), total suspended solids (TSS), organics, bacteria, and nutrients (nitrogen and phosphorous compounds).

C. Why is a General Permit Being Issued?

1. Section 301(a) of the Clean Water Act (Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit. Although such permits have been issued to individual dischargers, EPA's regulations do authorize the issuance of ''general permits'' to categories of discharges [40 CFR 122.28] when a number of point sources are:

a. Located within the same geographic area and warrant similar pollution control measures;

b. Involve the same or substantially similar types of operations;

c. Discharge the same types of waste;

d. Require the same effluent limitations or operating conditions;

e. Require the same or similar monitoring requirements; and

f. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

2. The use of a General Permit to regulate CAFOs is appropriate because of the following:

a. Waste characteristics from different CAFOs are substantially similar [*Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Feedlots Point Source Category* (Development Document), January 1974; and the *Environmental Assessment of Regulatory Strategies for Confined Animal Feeding Operations in Idaho* (EA), by Jones and Stokes Associates, Inc. 1985].

b. The effluent limitations and requirements for all CAFOs covered by this general permit are identical. They are supported by the promulgated effluent guidelines (40 CFR 412.13), best management practices (BMPs), and other requirements [40 CFR 122.44(k)].

3. Like individual permits, a violation of a condition contained in a general permit constitutes a violation of the Act and subjects the owner or operator of the permitted facility to the penalties specified in Section 309 of the Act.

IV. Permit Coverage

A. Who Needs To Be Covered by This Permit?

Part I.A. of the permit states that ''A permit is required for discharges from operations classified as a CAFO.'' This is required pursuant to 40 CFR 122.2 which defines a CAFO as a point source and Section 402 of the Clean Water Act and 40 CFR 122.1(b) which requires that all discharges from any point source must be regulated by a National Pollutant Discharge Elimination System (NPDES) permit.

B. What Constitutes a Discharge?

In accordance with 40 CFR 122.2, a discharge is any addition of any pollutant or combination of pollutants to waters of the United States. This includes runoff from corrals, stock piled manure, or silage piles, overflow from storage ponds, overflow from animal watering systems which are contaminated by manure, and overflow from irrigated fields in which wastewater is applied at greater than the agronomic rate. As stated above, waters of the United States includes not only rivers, streams, intermittent streams and lakes, but also irrigation ditches, laterals, canals, etc. which eventually flow into rivers, streams, and lakes. [*In Re Bettencourt*, Docket # 1093–04–17–309(g), March 30, 1994, Order of Summary Determination, at 13–19.]

This permit only allows a discharge during certain storm events as established in part II.A. of the permit and only discharges resulting from the overflow from a control facility that is properly designed and operated. All other discharges are not allowed under this permit.

C. How to Determine if an Animal Feeding Operation is a CAFO?

EPA's interpretation of the regulations pertaining to feeding operations divides the industry into two groups; CAFOs and non-CAFOs. As stated above, CAFOs are defined as point sources and are therefore, required to obtain an NPDES permit for any discharges. However, non-CAFOs are considered nonpoint sources and are not subject to the NPDES program.

Part I.C., VII, Appendix A, and Appendix B of the permit establish the definition of a CAFO. This definition is required pursuant to 40 CFR 122.23 and 40 CFR 122 Appendix B.

1. Animal Feeding Operation

For an operation to be a CAFO, the facility must first qualify as an animal feeding operation. An animal feeding operation is a facility where:

—Animals are kept a total of 45 days or more during any 12 month period, and

—Crops, vegetation forage growth, or post-harvest residues are not sustained during the normal growing season on the facility [40 CFR 122.23(b)(1)].

The first part of this definition means that animals must be fed or maintained on the lot or facility for a minimum of 45 days. However, it does not mean that the *same* animals must remain on the lot for 45 days or more; only that *some* animals are fed or maintained on the lot 45 days out of any 12 month period. The 45 days do not have to be consecutive, nor does the 12 month period have to correspond to the calendar year. For example, the 12 month period may be counted from June 1 to the following May 31. This can include areas such as corrals, pens, auction yards, etc.

The second part of this definition distinguishes feedlots from pasture land, which were not intended to be covered as a CAFO by the regulations. This part of the definition narrows the geographic scope of the regulations to the portion of the feedlot where animals are confined and where natural forage or planted vegetation does not occur during the normal growing season (for that geographic area). Feedlots with constructed floors, such as solid concrete or metal slats, clearly satisfy this part of the definition. Other feedlots may have open dirt areas. These ''open dirt'' feedlots may have some vegetation growth along the edges while animals are present or during months when animals are kept elsewhere. EPA

interprets the regulations to mean that if a facility maintains animals in an area without vegetation, including dirt-floored lots, the facility meets the second part of the definition.

Note: That although pasture land itself can not be classified as a CAFO, if these pastures are used as land application sites for CAFO waste, any waste water overflows from these pastures into receiving waters is considered a discharge.

2. CAFO Criteria

If a facility is an animal feeding operation as defined above, the next step is to determine if the operation is a CAFO. In general, there are three situations in which an animal feeding operation can be a CAFO.

The first is for large facilities. Any operation that confines more than the number of animals listed in 40 CFR 122 Appendix B(a) and Part VII.F.1. of the permit are CAFOs. For example, dairies with more than 700 mature dairy cows or feedlots with more than 1000 feeders are considered to be CAFOs.

The second category is for medium sized animal feeding operations which contain the number of animals listed in 40 CFR 122 Appendix B(b) and Part VII.F.2. of the permit. In addition to the size of the operation, the method of discharge is also considered. For medium sized animal feeding operations, the discharge must be through a man-made conveyance or discharged directly into waters of the United States [40 CFR 122 Appendix B(b)]. Man-made conveyance is the transport of wastewater off the property into waters of the United States through a pipe, ditch, lateral, channel gully, etc. Direct discharge occurs when a stream, creek, or other water body runs through the facility. Direct discharge is assumed if confined animals have direct access to these water bodies.

When trying to determine if your operation is a CAFO under this second category, keep in mind that a discharge through the means described does not have to be occurring at all times. If you think your animal feeding operation may have a discharge some time in the future, or if you had one in the past, through the means described above, then your operation is a CAFO.

The third scenario in which an animal feeding operation can become a CAFO is if the EPA Regional Administrator of Region 10 designates a facility as a significant contributor of pollutants (SCP) [40 CFR 122.23(c)]. This third scenario applies to facilities that are not covered by the first two scenarios and is an attempt to regulate smaller, problem facilities. This designation is done on a case-by-case basis after an inspection of the facility has been conducted. The facility must then be notified of this designation by the Director.

3. Animal Units

The number of animal units confined is another factor considered in determining whether a facility is a CAFO. ''Animal unit'' is a term defined by the regulations (40 CFR 122 Appendix B) and varies according to animal type; one animal is not always equal to one animal unit. Conversion to animal units is a procedure used to determine pollution equivalents among the different animal types; one dairy cow produces more waste than one sheep. This calculation is also used on facilities with more than one animal type onsite.

Animal Units are incorporated into the above definitions of a CAFO. Facilities with greater than 1000 animal units (large facilities) are CAFOs. Facilities with between 300 and 1000 animal units (medium sized facilities) and discharge through a man-made conveyance or discharge directly into waters of the United States are also CAFOs. Examples of animal unit calculations are included in Appendix A of the permit.

D. Permit Coverage

A Notice of Intent (NOI) to be covered under this General Permit is required for permit coverage [40 CFR 122.28(b)(i)]. The requirements are outlined in Part I.D. and Appendix C of the permit.

The regulations provide an exception to those feeding operations which intend to discharge *only* in the event of a 25-year, 24-hour storm event. The regulations state that these facilities are not CAFOs (40 CFR 122 Appendix B) and, as a result are not subject to regulation under this permit. However, EPA recommends, as a precaution, that all facilities that are classified as CAFOs by meeting the specifications described above in paragraphs IV.C.1, 2, or 3, obtain permit coverage even though they fully expect not to ever have a discharge. An example given in the *Guidance Manual on NPDES Regulations for Concentrated Animal Feeding Operations* is as follows:

An unpermitted facility that could be classified as a CAFO has waste handling facilities to contain the process generated wastewater plus the runoff from a 25-year, 24-hour rain fall event plus three inches of runoff from accumulation of winter precipitation. It rains heavily for three weeks, but the rainfall in any 24-hour period never exceeds the 25-year, 24-hour storm event. The facility's waste handling facilities reaches capacity and overflows, discharging to waters of the United States. The facility has violated the CWA. If the facility had had a permit, it would *not* have been in violation of the CWA.

E. Permit Expiration

Part I.E. of the permit specifies that the permit is effective for five years. This is required in accordance with 40 CFR 122.46(a).

V. Permit Requirements

A. Basis of Discharge Limitations

1. Statutory Requirements

Section 301(a) of the Act prohibits the discharge of any pollutant to waters of the United States without a National Pollutant Discharge Elimination System (NPDES) permit unless such a discharge is otherwise authorized by the Act.

It is specified in the Act that issued NPDES permits must contain effluent limitations reflecting the most stringent of (1) receiving water quality standards established pursuant to state law or regulations and (2) technology-based effluent guidelines established by EPA to achieve certain levels of wastewater treatment technology. In accordance with Section 301 of the Act, the technology levels applicable to CAFOs are Best Practicable Control Technology Currently Available (BPT) and Best Available Technology Economically Achievable (BAT). In addition, Section 306 of the Act requires the achievement by new source dischargers of the best available demonstrated control technology or New Source Performance Standards (NSPS).

Technology-based requirements may be established through one of two methods: (1) Application of national effluent limitations guidelines promulgated by EPA under Section 304 of the Act and NSPS promulgated under Section 306 of the Act; and (2) on a case-by-case basis under Section 402(a)(1) of the Act and 40 CFR 125.3, using Best Professional Judgement (BPJ), for pollutants or classes of discharges for which EPA has not promulgated national effluent limitations guidelines.

Based on national effluent limitations guidelines and 40 CFR 125.3, this permit establishes a ''no discharge'' effluent limitation for CAFOs. Discharges are allowed, however, only during chronic or catastrophic rainfall events from a facility that is designed to store all generated process wastewater; plus, all contaminated runoff from a 25-year, 24-hour rainfall event; plus, three inches of runoff from the accumulation of winter precipitation; or the amount of runoff from the accumulation of precipitation from a one in five year winter.

In many cases, the technology utilized to achieve no discharge is containment of all contaminated liquid runoff resulting from rainfall, snowmelt, or related cause, and application of these liquids, along with the generated solid wastes to productive cropland at a rate which will provide moisture and nutrients that can be utilized by the crops. To implement this technology requires provisions for containment such as a lagoon. Provisions must also be made for land application of the wastes onto the crop land such as by sprinklers.

2. Technology-Based Limitations

In March 1976, EPA published national effluent guidelines for CAFO operations greater than 1000 animal units. The national effluent guidelines established BPT, BAT, and NSPS. The technology-based effluent limitation established by the national effluent guidelines specifies that ''there shall be no discharge of process waste water pollutants to navigable waters'' (40 CFR 412). However, the guidelines do allow a discharge whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25 year, 24 hour, storm.

According to the Development Document, the use of wastewater containment plus the application of waste to productive cropland can achieve the stated goal of ''no discharge'' of pollutants to waters of the United States.

Effluent limitation guidelines have not yet been established for CAFO operations consisting of less than 1000 animal units. However, the EPA has determined to regulate these smaller CAFO operations due to the potential water quality impacts which can be caused by these facilities. According to the EA, animal waste contains a number of pollutants which can impact water quality. The most commonly recognized contaminants are suspended solids and organics, bacteria, and nutrients. These pollutants have been observed to cause a number of water quality problems.

As a result, the EPA has established technology based effluent limitations for these smaller facilities based on BPJ. The effluent limitation established based on BPJ for CAFOs with less than 1000 animal units shall be identical to that established in the national effluent guidelines required for the larger facilities.

An economic analysis was done when the technology-based requirements for the national effluent guidelines (40 CFR 412) were published. Region 10 believes that the same economic and technology rationale would apply to the smaller facilities covered by this permit. Also, Region 10 believes that the requirement of ''no discharge'', achieved through the utilization of waste containment plus land application is the most economical option available to the smaller facilities which will prevent water quality problems.

If, however, any facilities with less than 1000 animal units believe that the economic analysis for the national effluent guidelines would not apply to their facility and that they would be able to achieve necessary water quality requirements of the receiving stream, through the use of biological or equivalent treatment systems, those facilities may apply for individual permit coverage.

3. Water Quality Based Limitations

In addition to technology-based controls, Section 301(b) of the CWA also requires that NPDES permits must include any conditions more stringent than technology-based controls necessary to meet State water quality standards. Water quality-based requirements are established under this provision on a case-by-case basis.

Receiving waters within the scope of this permit are classified by the Idaho State Water Quality Standards for use in agricultural water supply, domestic water supply, protection and maintenance of cold and warm water biota, salmonid spawning, and primary and secondary contact recreation (Idaho Department of Health and Welfare Rules, IDAPA 16.01.02.100.101–.160).

The State water quality parameters which could be affected by these discharges are floating, suspended, or submerged matter, excess nutrients, oxygen-demanding materials, sediment, and fecal coliforms (Idaho Department of Health and Welfare Rules, IDAPA 16.01.02.200.05–.08).

Water quality-based requirements have been established in the permit. In addition to containing all process generated wastewater and the runoff from a 25-year, 24-hour rainfall event (technology-based requirement), the permit also requires the additional containment of three inches of winter precipitation or the amount of runoff from the accumulation of precipitation from the one in five year winter. This additional containment is required based on information presented in the EA.

The rationale presented in the EA for the additional volume is that the technology-based requirements have been found insufficient in many colder states because they did not take into account the effects of frozen ground. The water quality degradation from animal confinement areas occurs to the greatest extent primarily in winter and spring. During these periods, there is increased precipitation while soils are either likely to be frozen or saturated. Both conditions decrease soil infiltration capacity. Greater runoff quantities are likely to be generated, but less than normal amounts of water can be retained on-site. In Idaho, climatic conditions indicate at least a 4-month holding period is necessary.

The proposed permit requires facilities to accommodate process waste, runoff from a 25-year, 24-hour storm event, and 3 inches of runoff which is approximately equal to runoff expected from 4 months of winter runoff as expected from a 1- in 5-year winter. This provision was deemed appropriate as a result of data and analyses presented in the EA. According to this EA:

—The retention of runoff from winter precipitation will significantly benefit water quality. Snowmelt, especially when combined with a rainfall event, could wash manure-laden water directly into the streams without this allowance.

—Soil remains frozen for four months in many areas of Idaho. During this time, control facilities cannot be pumped out onto fields for land application. Retention of winter precipitation would accommodate this constraint.

—The results of an analysis performed for the EA indicate that the retention of three inches of net spring runoff is adequate to protect water quality.

B. Best Management Practices (BMP)

BMP conditions in Part II.B. of the proposed permit were developed pursuant to Section 304(e) of the Act and 40 CFR 122.44(k)(3). BMPs are used in conjunction with technology-based and water-quality based effluent limitations. BMPs are appropriate when numeric effluent limitations are infeasible or the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Act.

BMPs can describe a wide range of management procedures, schedules of activities, prohibitions on practices, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include operating procedures, treatment requirements and practices to control feedlot runoff, drainage from raw materials, spills or leaks.

Part II.B. of the permit requires the implementation of management

practices referenced in the ''Idaho Waste Management Guidelines for Confined Feeding Operations''. These management practices include, but are not limited to, the following:

—Minimizing wastewater volumes by diverting uncontaminated surface runoff from entering the CAFO; by water conservation whenever possible; and by roof construction to exclude precipitation whenever possible.

—Management of precipitation runoff by site selection for corrals so that runoff can be easily collected; by providing buffer zones around land application sites, etc.

—Assure adequate waste system design and operation by assuring that the waste storage ponds are adequately sized to contain the waste produced; by assuring that adequate land is available to land apply the waste materials; etc.

Part II.B. of the permit also specifies additional management practices. The purpose of these management practices are explained below.

1. Design of Control Facilities

This management practice requires that any waste storage ponds built after the issuance of this permit or any existing waste storage pond which is modified in any way (enlarged, or in any way redesigned) shall be built following the ''Idaho Waste Management Guidelines for Confined Feeding Operations'' and the most recent edition of the Natural Resource Conservation Service (NRCS) National Handbook of Conservation Practices and associated State Addenda, SCS Technical Note #716. This may require the incorporation of a liner. The purpose of this management practice is to reduce the amount of pollutants seeping from the lagoon and eventually reaching waters of the United States.

Note That plans and specifications for these new or redesigned facilities must be submitted to the Idaho Department of Health and Welfare, Division of Environmental Quality for review and approval prior to construction.

2. Facility Expansion

This management practice requires that before a CAFO is expanded to include more animals or covers more area, the waste handling system must first be upgraded to handle the additional waste generated.

3. Chemical Handling

The purpose of this practice is to assure that any toxic chemicals such as pesticides are handled and disposed of properly such that discharges to waters of the United States are prevented.

4. Access Restriction

This practice prevents direct contact of confined animals to waters of the United States. This requires that confined animals be separated from any surface waters (including irrigation ditches). The provisions of the permit cannot be met without this restriction because discharges would enter navigable waters directly from the animals during subchronic and subcatastrophic rainfall events. In addition, such discharges would be in direct violation of Section 301(a) of the Act.

This provision does not apply to cattle that are outside the CAFO boundary. For example, cattle that are out on pasture that is outside the boundary of the CAFO are not required to be restricted from waters of the United States by this permit.

5. Land Application

Part II.B.5. of the proposed permit requires that any solid or liquid wastes from a CAFO which is land applied must be applied at agronomic rates. This means that the application rate must not exceed that rate which will provide the crop or forage growth with needed nutrients for optimum health and growth.

The purpose of this requirement is to limit the amount of nutrients to that required by crops and to prevent the use of these fields as disposal sites. Fields with nutrient amounts in excess of agronomic rates are more likely to discharge pollutants into waters of the United States.

C. Prohibitions

Part II.C. of the proposed permit identifies discharges which are not authorized by this permit. These prohibitions are identified below.

—*Part II.C.1.* prohibits the discharge into waters of the United States of any substance from a CAFO which is not considered process wastewater. Process wastewater is defined in Part VII.M. of the proposed permit. The purpose of this prohibition is to assure that pollutants, other than that associated with CAFO operations, do not enter waters of the United States. This prohibition is required pursuant to Section 304(e) of the Act and 40 CFR 122.44(k)(3).

—*Part II.C.2.* of the proposed permit prohibits the discharge of process wastewater to waters of the United States by means of a hydrologic connection. This means that discharges that enter surface waters indirectly through groundwater are prohibited. An example of such a discharge is a leak from a control facility which enters groundwater and eventually enters surface water through a connection. This prohibition is required in order to be in compliance with the effluent limitation of ''no discharge'' established in this permit. In addition, the following decisions support the definition of a hydrologic connection as a discharge to waters of the United States:

—*McClellan Ecological Seepage v. Weinberger,* 707 F. Supp. 1182, 1194 (E.D. Cal. 1988) (EPA has no statutory authority to regulate discharges to isolated wetlands; cites substantial legislative history; where hydrologic connection exists between groundwater and surface waters, however, NPDES permit may be required);

—*Sierra Club v. Colorado Refining Co.,* Civ. No. CIV.A.93–K–1713 (D. Col. Dec. 8, 1993) (''[The] Clean Water Act's preclusion of the discharge of any pollutant into 'navigable waters' includes such discharge which reaches 'navigable waters' through groundwater.'');

—*Leslie Salt Co. v. United States,* 896 F.2d 354, 358 (9th Cir. 1990) (CWA jurisdiction existed over salt flat even though hydrologic connection between salt flat and navigable waters was man-made; ''The fact that third parties, including the government, are responsible for flooding Leslie's property is irrelevant. The Corps' jurisdiction does not depend on how the property at issue became a water of the United States. Congress intended to regulate local aquatic ecosystems regardless of their origin.'').

The control of such discharges are best handled in the design phase of the control facility. The NPDES permit requires the use of the *Idaho Waste Management Guidelines for confined Feeding Operations* when designing control facilities. In certain areas the use of liners may be required as part of control facility construction.

—*Part II.C.3.* of the proposed permit prohibits the discharge of land applied wastes to waters of the United States. The purpose of this prohibition is to prevent wastewater pollutants from entering waters of the United States. For example, wastewater must not be applied at such a rate that runoff from the applied fields is entering waters of the United States. This provision also applies when the ground is saturated

from precipitation or frozen and wastewater is being applied resulting in runoff entering waters of the United States.

VI. Basis for Monitoring and Reporting Requirements

A. Notice of Intent

Part I.D. of the permit requires that a Notice of Intent (NOI) be submitted to EPA and the State. The NOI fulfills the application requirements for CAFOs in accordance with 40 CFR 122.21(i).

B. Discharge Notification

Parts II.D. and IV. of the permit identify the monitoring and reporting requirements for CAFOs. These parts require the permittee to report to EPA, by phone, within 24-hours, any discharge from the CAFO to Waters of the United States. The permittee is also required to submit a written report to EPA and the Idaho Department of Health and Welfare Division of Environmental Quality within five days of the discharge. These notification requirements are in accordance with 40 CFR 122.44(i), 122.41(l)(4), and 122.41(l)(6).

The required monitoring reports differ from those described in 40 CFR 122.41(l)(4) as follows:

—The Discharge Monitoring Report (DMR) forms have been determined to be inappropriate for the type of monitoring information required from the permitted facilities, and will not be used.

—No calculations are required to meet permit effluent limitations.

VII. Limitations of the General Permit

A. Limitations on Coverage

In accordance with Part 122.28, the Director may determine that the General Permit is inappropriate for certain facilities. This can occur in situations where the permittee is not in compliance with the General Permit or if more stringent requirements are necessary to achieve state water quality standards.

The General Permit may also be inappropriate for CAFOs that discharge into sanitary sewer systems. In this case, it is the sanitary system that is discharging and therefore requires a permit.

Discharges from duck feeding operations established prior to 1974 are also not covered by this General Permit.

B. Individual Permits

Part III.B. of the permit establishes the circumstances in which an individual permit (instead of the General Permit) may be appropriate. These provisions are included in the permit pursuant to 40 CFR 122.28.

VIII. Other Requirements

A. Endangered Species Act

Formal consultation is not necessary for CAFOs covered by this general permit since this is a no discharge permit. Endangered species should not be impacted by surface water discharges from facilities in compliance with this permit.

B. State Certification

Section 301(b)(1)(c) of the Act requires that an NPDES permit contain conditions which ensure compliance with applicable State water quality standards or limitations. Section 401 requires that States certify that Federally issued permits are in compliance with State law. No permits can be issued until the requirements of Section 402 are satisfied. Therefore, EPA is requesting the State of Idaho Department of Health and Welfare to provide appropriate certification for the draft general permit pursuant to 40 CFR 124.53.

Authorization to Discharge Under the National Pollutant Discharge Elimination System (NPDES) for Concentrated Animal Feeding Operations (CAFO)

General Permit No.: IDG010000

In compliance with the provisions of the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100–4, the ''Act'':

Owners and operators of CAFOs except those sites excluded from coverage in Part I of this NPDES permit, are authorized to discharge in accordance with effluent limitations, monitoring requirements, and other provisions set forth herein.

A COPY OF THIS GENERAL PERMIT MUST BE KEPT AT THE SITE OF THE CAFO AT ALL TIMES.

This permit will become effective _____.

This permit and the authorization to discharge under the National Pollutant Discharge Elimination System shall expire 5 years after the effective date of this permit.

Signed this _____ day of August 1995.

Janis Hastings,

Acting Director, Water Division, Region 10.

I. Permit Coverage

A. Who needs to be covered by this permit?
B. What constitutes a discharge?
C. How to determine if your animal feeding operation is a CAFO?
D. How to apply for permit coverage?
E. Permit Expiration

II. Permit Requirements

A. Discharge Limitations
B. Best Management Practice (BMP)
1. Design of Control Facilities
2. Facility Expansion
3. Chemical Handling
4. Access Restriction
5. Land Application
6. Emergency Operation and Maintenance
C. Prohibitions
D. Discharge Monitoring and Notification

III. Limitations of the General Permit

A. Limitations on Coverage
B. Requiring an Individual Permit

IV. Monitoring, Reporting and Recording Requirements

A. When to Report?
B. What to report?
C. Other Noncompliance Reporting
D. Inspection and Entry

V. Compliance Responsibilities

A. Duty to Comply
B. Penalties for Violations of Permit Conditions
1. Administrative Penalty
2. Civil Penalty
3. Criminal Penalties
a. Negligent Violations
b. Knowing Violations
c. Knowing Endangerment
d. False Statements
C. Need to Halt or Reduce Activity not a Defense
D. Duty to Mitigate
E. Proper Operation and Maintenance
F. Removed Substances
G. Toxic Pollutants

VI. General Requirements

A. Anticipated Noncompliance
B. Permit Actions
C. Duty to Reapply
D. Duty to Provide Information
E. Other Information
F. Signatory Requirements
G. Availability of Reports
H. Oil and Hazardous Substance Liability
I. Property Rights
J. Severability
K. State Laws
L. Paperwork Reduction Act

VII. Definitions

I. Permit Coverage

A. Who Needs To Be Covered by This Permit?

A permit is required for discharges of process wastewater from all operations classified as a Concentrated Animal Feeding Operation (CAFO).

B. What Constitutes a Discharge?

This permit does not allow the discharge of process wastewater except in accordance with Part II.A. of this permit.

A discharge of process wastewater is the release of pollutants from a CAFO which enters surface waters such as a river, stream, creek, lake, or other waters of the United States. Process wastewaters include, but are not limited to, the following:

—Runoff from corrals, stock piled manure, and silage piles;

—Overflow from storage ponds; and

—Runoff from irrigated fields in which wastewater is applied at greater than agronomic rates.

C. How To Determine If Your Animal Feeding Operation Is a CAFO?

Review the following questions to determine if your facility is a CAFO.

1. Do you operate a facility where animals are confined and fed or maintained?

If yes, proceed to next question. If no, your facility is not a CAFO.

2. Are animals confined and fed or maintained for a total of 45 days or more in any 12 month period?

If yes, proceed to next question. If no, your facility is not a CAFO.

3. Do any crops or vegetation exist in the confinement lot or facility?

If no, proceed to next question. If yes, your facility is not a CAFO.

4. Does your facility confine greater than the following number of animals:

—700 mature dairy cattle,
—1000 slaughter or feeder cattle, or
—1000 animal units (See Appendix A for details)?

If yes, your facility is a CAFO. If no, proceed to next question.

5. Does your facility confine the following number of animals:

—between 200 and 700 mature dairy cattle,
—between 300 and 1000 slaughter or feeder cattle, or
—between 300 and 1000 animal units (See Appendix A for details)?

If yes, proceed to question 7. If no, proceed to next question.

6. For facilities with less than the animals established in Question 5. above, have you been notified by EPA, after an inspection, that your facility has been designated a CAFO? See Appendix B for details on significant contributors of pollution.

If yes, your facility is a CAFO.

7. Does your facility discharge directly into rivers, streams, creeks or other waters of the United States?

If yes, your facility is a CAFO. If no, proceed to next question.

8. Does your facility discharge through a man-made device such as a pipe, ditch, or field overflow from land application, into a river, stream, creek or other waters of the United States?

If yes, your facility is a CAFO. If no, your facility is not a CAFO.

9. Have you been otherwise notified by EPA that your facility is a CAFO? If yes, your facility is a CAFO. (The Regulations state that ''the Director may designate any animal feeding operation as a CAFO upon determining that is it a significant contributor of pollution to the waters of the United States.'')

If you answered Yes to questions 4, 6, 7, 8 or 9 above, your facility is a CAFO.

See Part VII. of this permit for more details on the definition of a CAFO.

D. Permit Coverage

1. Owners or operators of CAFOs must submit an application (also known as a Notice of Intent) to the Environmental Protection Agency (EPA) to obtain coverage under this permit. A list of information required for a complete application can be found in Appendix C of this permit.

2. The application shall be signed by the owner or other authorized person in accordance with Part VI.F. of this permit.

3. The application must be submitted to EPA at least 90 days prior to discharge. Coverage under this permit requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to the CAFO.

4. Signed copies of the application shall be sent to: U.S. EPA Region 10, WD–134 CAFO NOI, 1200 Sixth Avenue, Seattle, Washington 98101.

5. CAFOs in Idaho must also send a copy of the application to: Idaho State Division of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706–1255.

E. Permit Expiration

Coverage under this permit will expire five (5) years from the date of issuance.

II. Permit Requirements

A. Discharge Limitations

There shall be no discharge of process wastewater to waters of the United States except when precipitation events cause an overflow of process wastewater from a control facility properly designed, constructed, maintained, and operated to contain:

1. All process generated wastewater resulting from the operation of the CAFO (such as wash water, parlor water, watering system overflow, etc.); plus,

2. All the contaminated runoff from a 25-year, 24-hour rainfall event; plus,

3. a. Three inches of runoff from the accumulation of winter precipitation; or

b. The amount of runoff from the accumulation of precipitation from a one in five year winter.

B. Best Management Practice (BMP)

At a minimum, the management practices established in the *Idaho State Waste Management Guidelines for Animal Feeding Operations* and the BMPs listed below shall be implemented to prevent contamination of waters of the United States:

1. Design of Control Facilities

All control facilities constructed after the issuance date of this permit or any existing control facility which is redesigned and modified in any way after the issuance of this permit shall be designed, constructed and maintained in accordance with the *Idaho State Waste Management Guidelines for Animal Feeding Operations* and the most recent edition of the Natural Resource Conservation Service (NRCS) *National Handbook of Conservation Practices and associated State Addenda*, SCS Technical Note #716. *Plans and specifications for these control facilities shall be submitted to the Idaho Department of Health and Welfare Division of Environmental Quality (IDHW–DEQ) for review and approval prior to construction.*

2. Facility Expansion

CAFO operations shall not be expanded, either in size or numbers of animals, unless the waste handling procedures and structures are adequate to accommodate any additional wastes that will be generated by the expanded operations. Such expansion shall be consistent with the *Idaho State Waste Management Guidelines for Animal Feeding Operations.*

3. Chemical Handling

All wastes from dipping vats, pest and parasite control units, and other facilities utilized for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent any pollutants from entering the waters of the United States.

4. Access Restriction

No flowing surface waters (e.g. rivers, streams, or other waters of the United States) shall come into direct contact with the animals confined on the CAFO. Fences may be used to restrict such access.

5. Land Application

Land application of process wastewater, control facility solids, and/or manures (land application materials) shall be applied at agronomic rates and conducted in accordance with the *Idaho State Waste Management Guidelines for Animal Feeding Operations* or other guidance approved by the IDHW–DEQ.

6. Emergency Operation and Maintenance

It shall be considered ''Proper Operation and Maintenance'' for a control facility which has been properly maintained and is otherwise in compliance with the permit, and that is in danger of imminent overflow due to chronic or catastrophic rainfall, to discharge process wastewaters to land application sites for filtering. The volume discharged during such an event shall be limited to that amount reasonably expected to overflow from the waste storage pond. Such discharges shall be reported to EPA in accordance with Part IV of the permit.

C. Prohibitions

1. The discharge of any materials or substance other than process wastewater is strictly prohibited by this permit.

2. Discharges of process wastewaters to waters of the United States by means of a hydrologic connection is prohibited.

3. The discharge or drainage of land applied wastes (solid or liquid) from land applied areas to waters of the United States is prohibited.

D. Discharge Monitoring and Notification

If, for any reason, there is a discharge to a water of the United States, the permittee is required to monitor and report as established in Part IV. of this permit.

Discharge flow and volume from a CAFO may be estimated if measurement is impracticable.

III. Limitations of the General Permit

A. Limitations on Coverage

The following CAFOs are *not covered* by this permit:

1. CAFOs which have been notified by the Director to file for an individual permit in accordance with Part III.B. of this permit.

2. CAFOs that discharge all process wastewater to a publicly owned sanitary sewer system which operates in accordance with an NPDES permit.

3. Concentrated Duck feeding operations established prior to 1974.

B. Requiring an Individual Permit

1. The Director may require any person authorized by this permit to apply for and obtain an individual NPDES permit. The Director will notify the owner or operator in writing that an individual permit application is required. If an owner or operator fails to submit the permit application by the date specified in the Director's written notification, then coverage by this general permit is automatically terminated.

2. Any owner or operator covered by this permit may request to be excluded from the permit coverage by applying for an individual permit. The owner or operator shall submit an individual application (Form 1 and Form 2B) to the Director with reasons supporting the request.

3. When an individual NPDES permit is issued to an owner or operator otherwise covered by this permit, coverage by this permit is automatically terminated on the effective date of the individual permit.

4. When an individual NPDES permit is denied to an owner or operator otherwise covered by this permit, coverage by this permit is automatically reinstated on the date of such denial, unless otherwise specified by the Director.

IV. Monitoring, Reporting and Recording Requirements

A. When to Report?

If, for any reason, there is a discharge to a water of the United States, the permittee is required to:

1. Verbally notify the EPA of the discharge at (206) 553–1669 within 24 hours, and

2. Notify the EPA and the State of the discharge in writing within 5 days of the discharge. Written notification shall be sent to the addresses identified in Part I.D. of this permit.

B. What to Report?

The information required for notification shall include:

1. A description and cause of the discharge, including a description of the flow path to the receiving water body. Also, an estimation of the duration of the flow and volume discharged.

2. The dates and times of the discharge, and, if not corrected, the anticipated time the discharge is expected to continue, as well as procedures implemented to prevent the recurrence of the discharge.

3. If caused by a precipitation event(s), information from the National Weather Service concerning the size of the precipitation event.

4. If any samples are collected and analyzed the written report shall also include the following:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The analytical techniques or methods used; and

e. The results of such analyses.

5. The Director may waive the written report on a case-by-case basis if an oral report has been received within 24 hours by the Water Compliance Section in Seattle, Washington, by phone, (206) 553–1669.

6. Any reports submitted to EPA must be signed by the owner or authorized person in accordance with Part VI.F. of the permit.

C. Other Noncompliance Reporting

Instances of noncompliance not required to be reported in Part IV.A. of this permit shall be reported in writing within 5 days after the permittee becomes aware of the violation. The reports shall contain the information listed in Part IV.B. of this permit.

D. Inspection and Entry

The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

V. Compliance Responsibilities

A. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

B. Penalties for Violations of Permit Conditions

1. Administrative Penalty. The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to an administrative penalty, not to exceed $10,000 per day for each violation.

2. Civil Penalty. The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil penalty, not to exceed $25,000 per day for each violation.

3. Criminal Penalties:

a. Negligent Violations. The Act provides that any person who negligently violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

b. Knowing Violations. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

c. Knowing Endangerment. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

d. False Statements. The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more that $10,000, or by imprisonment for not more than 2 years, or by both.

Nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

C. Need To Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.

F. Removed Substances

Solids, sludges, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner so as to prevent any pollutant from such materials from entering waters of the United States.

G. Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

VI. General Requirements

A. Anticipated Noncompliance

The permittee shall also give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

B. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

C. Duty To Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit by resubmitting the information in Appendix C of this permit. The application should be submitted at least 180 days before the expiration date of this permit.

D. Duty To Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

E. Other Information

When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Director, it shall promptly submit such facts or information.

F. Signatory Requirements

All applications, reports or information submitted to the Director shall be signed and certified.

1. All permit applications shall be signed as follows:

a. For a corporation: by a responsible corporate officer.

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director, and

b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

3. Changes to authorization. If an authorization under paragraph VI.F.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph VI.F.2. must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this section shall make the following certification:

''I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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.''

G. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the office of the Director. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

H. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

I. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

J. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

K. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

L. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this draft general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submission made for the NPDES permit program under the provisions of the CWA.

VII. Definitions

A. *25-Year, 24-Hour Rainfall Event* means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years, as defined by the National Weather Service in Technical Paper Number 40, ''Rainfall Frequency Atlas of the United States'', May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

B. *Administrator* means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

C. *Agronomic Rates* means the land application of animal wastes at rates of application which provide the crop or forage growth with needed nutrients for optimum health and growth.

D. *Animal feeding operation* means a lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other, or if they use a common area or system for the disposal of wastes.

E. *Animal unit* means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle and dairy heifers multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

The director may establish other animal unit factors for animal types not listed above.

F. *Application* means a written ''notice of intent'' pursuant to 40 CFR 122.28.

G. *Best Management Practices (BMPs)* means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ''waters of the United States''. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

H. *Concentrated Animal Feeding Operation (CAFO)* means an ''animal feeding operation'' which meets the criteria in 40 CFR Part 122, Appendix B, or which the Director designates as a significant contributor of pollution pursuant to 40 CFR 122.23 (c). Animal feeding operations

defined as ''concentrated'' in 40 CFR 122 Appendix B are as follows:

1. New and existing operations which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers of animals specified in any of the following categories:

a. 1,000 slaughter or feeder cattle;

b. 700 mature dairy cattle (whether milkers or dry cows);

c. 2,500 swine weighing over 55 pounds each;

d. 500 horses;

e. 10,000 sheep or lambs;

f. 55,000 turkeys;

g. 100,000 laying hens or broilers when the facility has unlimited continuous low watering systems;

h. 30,000 laying hens or broilers when facility has liquid manure handling system;

i. 5,000 ducks; or

j. 1,000 animal units.

2. New and existing operations which discharge pollutants into waters of the United States either through a man-made ditch, flushing system, or other similar man-made device, or directly into waters of the United States, and which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers or types of animals in the following categories:

a. 300 slaughter or feeder cattle;

b. 200 mature dairy cattle (whether milkers or dry cows);

c. 750 swine weighing over 55 pounds;

d. 150 horses;

e. 3,000 sheep or lambs;

f. 16,000 turkeys;

g. 30,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;

h. 9,000 laying hens or broilers when facility has a liquid manure handling system;

i. 1,500 ducks; or

j. 300 animal units (from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep).

Provided, however, that no animal feeding operation is a CAFO as defined above if such animal feeding operation discharges only in the event of a 25-year, 24=hour storm event.

I. *Control Facility* means any system used for the retention of all wastes on the premises until their ultimate disposal. This includes the retention of manure, liquid waste, and runoff from the feedlot area.

J. *Director* means the Regional Administrator of EPA.

K. *Feedlot* means a concentrated, confined animal or poultry growing operation for meat, milk, or egg production, or stabling, in pens or houses wherein the animals or poultry are fed at the place of confinement and crop or forage growth or production is not sustained in the area of confinement.

L. *Ground Water* means any subsurface waters.

M. H*ydrologic Connection* means the flow between surface impoundments and surface water by means of a subsurface conveyance.

N. *Land Application* means the removal of wastewater and waste solids from a control facility and distribution to, or incorporation into the soil.

O. *Process Wastewater* means any process generated wastewater directly or indirectly used in the operation of a feedlot (such as spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, direct contact swimming, washing, or spray cooling of animals; and dust control) and any precipitation which comes into contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g., milk, eggs).

P. *Severe Property Damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

Q. *The Act* means Federal Water Pollution Control Act as amended, also known as the Clean Water Act, found at 33 USC 1251 *et seq.*

R. *Toxic Pollutants* mean any pollutant listed as toxic under section 307(a)(1) of the Act.

S. *Waters of the United States.* See 40 CFR 122.2.

Appendix A

Animal Units Calculations

''Animal unit'' is a term defined by the regulations and varies according to animal type; one animal is not always equal to one animal unit. Conversion to animal units is a procedure used to determine pollution equivalents among the different animal types; dairy cows produce more waste than sheep. This calculation is used on facilities with more than one animal type onsite.

The number of animal units is calculated as follows:

—number of slaughter and feeder cattle multiplied by 1.0, plus,

—number of mature dairy cattle multiplied by 1.4, plus,

—number of dairy heifers cattle multiplied by 1.0, plus,

—number of swine weighing over 55 pounds multiplied by 0.4, plus,

—number of sheep multiplied by 0.1, plus,

—number of horses multiplied by 2.0.

Example 1: Determine the number of animal units on a dairy operation which maintains 650 mature dairy cows and 300 dairy heifers.

[(# mature cows)(1.4) + (# heifers)(1.0)] = animal units

$[(650 \times 1.4) + (300 \times 1.0)] = 1210$ animal units.

Such a facility exceeds the 1000 animal units as established in Part I.C.4. of this permit, thus this facility is a CAFO and is subject to NPDES requirements.

Example 2: Determine the number of animal units on a feeding operation which maintains 650 slaughter cattle, 100 horses, and 1000 sheep.

$[(650 \times 1.0) + (100 \times 2) + (1000 \times 0.1)] = 950$ animal units.

This facility does not exceed the 1000 animal units required to be a CAFO in Part I.C.4. of this permit. However, it can be classified as a CAFO under Part I.C.5. of this permit if pollutants are discharged through a man-made conveyance or if pollutants are discharged directly to waters of the U.S. If this situation occurs, discharges are subject to NPDES requirements.

Appendix B

Significant Contributor of Pollutants

Definition

''Significant Contributor of Pollutants'' (SCP) is a designation of an animal feeding operation made by the Director on a case-by-case basis. The purpose of this designation is to regulate animal feeding operations that are not automatically classified as CAFOs in Part I.C. of the permit and have the potential of causing environmental harm.

Designation Procedure

—SCP determinations can only be conducted after an onsite inspection.

—The following factors are considered when making an SCP determination:

a. The size of the animal feeding operation and the amount of wastes reaching waters of the United States,

b. The location of the animal feeding operation relative to waters of the United States,

c. The means of conveyance of animal wastes and process wastewater to waters of the United States,

d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewater into waters of the United States, and

e. Other relevant factors.

—An animal feeding operation is a CAFO upon notification by the Director.

Appendix C

Notice of Intent (Application) Information Requirements

The Application to be covered by this permit shall include the following:

1. Previous NPDES permit number if applicable,

2. Facility owner's name, address and telephone number,

3. Facility operator's name, address and telephone number,

4. Types of waste handling practices currently used for processing wastes (such as containment in a waste storage pond plus land application),

5. Name of receiving water(s) to which wastewaters are (or may be) discharged from the facility (receiving waters include canals, latterals, rivers, streams, etc.),

6. The type and number of animals confined, and

7. A sketch of the operation, including control facilities, diversion ditches, building structures, feeding areas, slope, direction of overland and surface water flow, and proximity to surface waters.

[FR Doc. 95–21173 Filed 8–25–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

August 21, 1995.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. You are not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0166.

Expiration Date: 08/31/98.

Title: Preservation of Records of Communication Common Carriers, Part 42.

Estimated Annual Burden: 136 total annual hours; 2 hours per response; 68 respondents.

Description: Part 42 prescribes the regulations governing the preservation of records of communications common carriers that are fully subject to the jurisdiction of the FCC. The requirements are necessary to ensure the availability of carrier records needed by Commission staff for regulatory purposes.

OMB Control No.: 3060–0515.

Expiration Date: 08/31/98.

Title: Miscellaneous Common Carrier and Record Carrier Annual Letter Filing Requirement—Section 43.21(d).

Estimated Annual Burden: 38 total annual hours; 1.35 hours per response; 28 respondents.

Description: Pursuant to 47 CFR Section 43.21(d) each miscellaneous common carrier with operating revenues of $100 million for a calendar year shall file with the Common Carrier Bureau Chief a letter showing its operating revenues for that year and the value of its total communications plant at the end of that year. Each record carrier with operating revenues over $75 million for a calendar year shall file a letter showing selected income statement and balance sheet items for that year with the Common Carrier Bureau Chief. These letters must be filed by March 31 of the following year.

OMB Control No.: 3060–0470.

Expiration Date: 08/31/98.

Title: Computer III Remand Proceeding: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards and Implementation of Further Cost—CC Docket No. 90–623.

Estimated Annual Burden: 27,000 total annual hours; 300 hours per response; 18 respondents.

Description: Pursuant to 47 CFR 64.901 carriers are required to separate their regulated costs from nonregulated cost using the attributable cost method of cost allocation. Carriers must follow the principles described in Section 64.901. Carriers subject to 47 CFR 64.901 are also subject to the provisions of 47 CFR Sections 32.23 and 32.27. See 47 CFR 64.902. 47 CFR Section 64.903 requires local exchange carriers with annual operating revenues of $100 million or more to file cost allocation manuals. The manuals are used by Commission staff to detect improper cross-subsidization. A Memorandum Opinion and Order, adopted 6/23/93; released 7/01/93, issued by the Chief, Common Carrier Bureau adopted cost allocation uniformity requirements.

OMB Control No.: 3060–0391.

Expiration Date: 08/31/98.

Title: Monitoring Program for Impact of Federal-State Joint Board Decisions.

Estimated Annual Burden: 1376 total annual hours; 2.02 hours per response; 678 respondents.

Description: The Commission has monitoring program which requires the periodic reporting by telephone companies and the National Exchange Carrier Association. The information is used by the Commission, Joint Board, Congress and the general public to assess the impact of several Joint Board decisions.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–21245 Filed 8–25–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; Information Collection Revision Submitted for OMB Review

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice of information collection revision submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (''ASC'') has sent to the Office of Management and Budget (''OMB'') the following revision of a currently approved collection of information.

DATES: Comments on this information collection must be received on or before September 27, 1995.

ADDRESSES: Send comments to Edwin W. Baker, Executive Director, Appraisal Subcommittee, 2100 Pennsylvania Avenue NW., Suite 200, Washington, DC 20037; and Milo Sunderhauf, Clearance Officer, Office of Management and Budget, New Executive Office Building, Room 10226, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, Appraisal Subcommittee, 2100 Pennsylvania Avenue, NW., Suite 200, Washington, DC 20037, from whom copies of the information collection and supporting documents are available.

Summary of Revision

Title: 12 CFR part 1102, subpart C; Rules pertaining to the privacy of individuals and systems of records maintained by the Appraisal Subcommittee.

Type of Review: Expedited submission—approval requested by September 29, 1995.

Description: The information will be used by the ASC and its staff in determining whether to grant to an individual access to records pertaining to that individual and whether to amend or correct ASC records pertaining to that individual under the Privacy Act of 1974 (5 U.S.C. § 552a).

Form Number: None.

OMB Number: 3139–0004.

Affected Public: Individuals and households.

Number of Respondents: 50 respondents.

Total Annual Responses: 50 responses.

Average Hours Per Response: .33 hours.

Total Annual Burden Hours: 16.67 hours.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: August 22, 1995.

Edwin W. Baker,

Executive Director.

[FR Doc. 95–2128 Filed 8–25–95; 8:45 am]

BILLING CODE 6210–01–M

Appraisal Subcommittee; Information Collection Revision Submitted for OMB Review

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice of information collection revision submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (''ASC'') has sent to the Office of Management and Budget (''OMB'') the following revision of a currently approved collection of information.

DATES: Comments on this information collection must be received on or before September 27, 1995.

ADDRESSES: Send comments to Edwin W. Baker, Executive Director, Appraisal Subcommittee, 2100 Pennsylvania Avenue NW., Suite 200; Washington, DC 20037; and Milo Sunderhauf, Clearance Officer, Office of Management and Budget, New Executive Office Building, Room 10226, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, Appraisal Subcommittee, 2100 Pennsylvania Avenue NW., Suite 200, Washington, DC 20037, from whom copies of the information collection and supporting documents are available.

Summary of Revision

Title: 12 CFR part 1102, subpart B; Rules of Practice for Proceedings.

Type of Review: Expedited submission—approval requested by September 29, 1995.

Description: Procedures for ASC non-recognition and ''further action'' proceedings against State appraiser regulatory agencies and other persons under § 1118 of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. § 3347).

Form Number: None.

OMB Number: 3139–0005.

Affected Public: State, local or tribal government.

Number of Respondents: 56 respondents.

Total Annual Responses: 2 responses.

Average Hours Per Response: 60 hours.

Total Annual Burden Hours: 120 hours.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: August 22, 1995.

Edwin W. Baker,

Executive Director.

[FR Doc. 95–21219 Filed 8–28–95; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Elaine Blair, 4404 Trilby Avenue, Tampa, FL 33616, Sole Proprietor

LT International Company, 1480 West 8th Street, Brooklyn, NY 11204, Lersvidhya Thienvanich, Sole Proprietor

Seko Ocean Forwarding, Inc., 790 Busse Road, Elk Grove Village, IL 60007, Officer: Floyd E. Smith, Vice President

Air Pax, 916 Shaker Road, Longmeadow, MA 01105, Joseph Rizzari, Sole Proprietor.

Dated: August 22, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–21240 Filed 8–25–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

FCFT, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 21, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. FCFT, Inc., Princeton, West Virginia; to acquire 100 percent of the voting shares of First Community Bank of Mercer County, Inc., Princeton, West Virginia (an organizing bank), which will acquire the assets and assume the liabilties of the Mercer County West Virginia offices of First Community Bank, Inc., Princeton, West Virginia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Pan American Bancshares, Inc., Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Pan American Bank, Chicago, Illinois (in organization).

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. White Pine Bancorp, Inc., Pine River, Minnesota; to become a bank holding company by acquiring at least 22.7 percent of the voting shares of Norbanc Group, Inc., Pine River, Minnesota, and thereby indirectly acquire Pine River State Bank, Pine River, Minnesota.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Shamrock Bancshares, Inc., Coalgate, Oklahoma; to acquire 100 percent of the voting shares of Clayton State Bank, Clayton, Oklahoma.

Board of Governors of the Federal Reserve System, August 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–21231 Filed 8–25–95; 8:45 am]

BILLING CODE 6210–01–F

NationsBank Corporation; 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 September 11, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. NationsBank Corporation, Charlotte, North Carolina; to acquire CSF Holdings, Inc., Miami, Florida, and thereby indirectly acquire Citizens Federal Bank, Miami, Florida, and thereby engage in acquiring a unitary savings and loan holding company and its subsidiary federal savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–21230 Filed 8–25–95; 8:45 am]

BILLING CODE 6210–01–F

Pikeville National Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 11, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Pikeville National Corporation, Pikeville, Kentucky; to engage *de novo* in providing data processing services to its affiliates and subsidiaries and unrelated third-party depository institutions, pursuant to § 225.25(b)(7) of the Board's Regulation Y. The geographic scope for these activities is the State of Kentucky.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. First Security Corporation, Salt Lake City, Utah; to engage *de novo* through its subsidiary, First Security Leasing Company, Salt Lake City, Utah, in arranging and investing in entities for the financing of low income housing eligible for Federal income tax credits, and providing advice to customers in connection with the arranging of such entities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–21232 Filed 8–25–95; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Security Mission and Responsibilities of the General Services Administration (GSA) and the Federal Protective Service (FPS)

AGENCY: General Services Administration (GSA).

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform you of the steps GSA has already taken in response to the Oklahoma City bombing to provide a safe and secure Federal workplace and provide an update of efforts to upgrade security at GSA Federal facilities to meet the minimum standards outlined in the DOJ report entitled *Vulnerability Assessment of Federal Facilities*.

SUPPLEMENTARY INFORMATION: Four months have elapsed since the April 19 bombing of the Alfred P. Murrah Federal Building in Oklahoma City, and GSA continues the initiatives it undertook to enhance the security at buildings under its control.

These actions include a generally heightened level of security awareness; inspection of packages, briefcases and vehicles; and, generally tighter control of visitors and others within our buildings.

At a number of key locations, we have taken steps to limit public access and escort visitors, and are continuing to

pay particular attention to parking lots and garages as well as street level parking adjacent to the buildings. In a number of cases, restrictions have been placed on parking next to buildings.

We are committed to continuing these interim heightened security measures through September 30, and are taking steps to maintain these initiatives in FY 1996 until GSA begins implementation of updated security provisions identified in the DOJ study.

I would like to specifically recognize the efforts of the FPS in implementing and maintaining the heightened interim security measures during the past four months. I would also like to commend the entire agency for pulling together to accomplish the enormous task involved in dealing with the devastation of the bombing in Oklahoma City as well as the ensuing operational requirements. Most assuredly this task has been a difficult one, but the tremendous accomplishments of those involved is a fitting tribute to the dedication and professionalism of GSA employees nationwide.

GSA is well on its way to completing the task assigned by the President, and identifying the security needs of its facilities nationwide. To date, we have established Building Security Committees (BSC's) at the higher risk Level IV buildings. The BSC's are meeting and will identify the required security upgrades as outlined in the DOJ report. We continue to maintain the ambitious schedule established by the President. FPS will be monitoring the Level IV BSC activities, and developing guidelines for reporting and evaluating their security recommendations.

The DOJ report specifically stated that the FPS ''has the experience and the historical charter to provide security services'' in GSA federal buildings by using a wide range of technical and human resources (including both Federal Protective Police Officers (FPPO's) and contract security guards). Finally, an Executive Order establishing an Interagency Security Committee (ISC) headed by the Assistant Commissioner of the FPS has been signed, and the President is issuing a Memorandum for Executive Departments and Agencies recognizing GSA's leadership role in federal building and facility security.

The next few months will be both demanding and challenging as GSA and FPS endeavor to meet the Presidents ambitious schedule for implementing the DOJ study recommendations. During this time, I would ask everyone to remain committed to GSA's mission and responsibility to provide a safe and secure working environment for our clients, customers and visitors.

Dated: August 15, 1995.

Roger W. Johnson,

Administrator.

[FR Doc. 95–21223 Filed 8–25–95; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Medical Classification Systems and NCVHS Subcommittee on Ambulatory and Hospital Care Statistics: Meeting

Pursuant to Pub. L. 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: NCVHS Subcommittee on Medical Classification Systems and NCVHS Subcommittee on Ambulatory and Hospital Care Statistics.

Time and Date: 9 a.m.–1 p.m., September 15, 1995.

Place: Room 503A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee on Medical Classification Systems and the Subcommittee on Ambulatory and Hospital Care Statistics will meet jointly in a working session to discuss the final report of the compendium on person-level and event-level health care core data sets and to plan the NCVHS public meetings to obtain input from diverse parties who report and use standardized core data sets for enrollment and encounters; to receive an update on the NCHS Morbidity Classification Branch activities; and to review the subcommittees' work plans for 1995–1996.

CONTACT PERSON FOR MORE INFORMATION: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: August 22, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC)

[FR Doc. 95–21255 Filed 8–25–95; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 95N–0272]

Drug Export; Telfast (Fexofenadine Hydrochloride) Tablets 60 Milligrams (mg)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Marion Merrell Dow Inc., has filed an application requesting conditional approval for the export of the human drug Telfast (fexofenadine hydrochloride) tablets 60 (mg) to France for packaging for transshipment to the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 7520 Standish Place, Rockville, MD 20855, 301–594–3150.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Marion Merrell Dow Inc., Marion Park Dr., P.O. Box 9627, Kansas City, MO, 64134–0627, has filed an application requesting conditional approval for the export of the human drug Telfast (fexofenadine hydrochloride) tablets 60 mg to France for packaging for transshipment to the United Kingdom. Telfast (fexofenadine hydrochloride)

tablets is used for the relief of symptoms such as sneezing, watery eyes, blocked or runny nose, that occur with hayfever (seasonal allergic rhinitis). The application was received and filed in the Center for Drug Evaluation and Research on August 10, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 7, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: August 14, 1995.

Betty L. Jones,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–21224 Filed 8–25–95; 8:45 am]

BILLING CODE 4160–01–F

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part at 53 FR 8978, March 18, 1988) is amended to reflect the following reorganization in the Food and Drug Administration (FDA).

The functional statements for the Office of Compliance, Center for Drug Evaluation and Research (CDER), are being revised and updated to more accurately reflect the activities carried out by this Office.

Under section HF–B, Organization:

1. Delete the subparagraph, Office of Compliance (HFND), under the Center for Drug Evaluation and Research (HFN) and insert a new subparagraph reading as follows:

Office of Compliance (HFND). Monitors the quality of marketed drugs, including nontraditional drugs, through product testing, surveillance, and compliance programs.

Develops policy and standards for labeling, current good manufacturing practice issues, clinical and good laboratory practice investigations, postmarketing surveillance, and drug industry practices to demonstrate the safety and effectiveness of human drug products and ensures the uniform interpretation of such standards.

Develops and directs drug product quality enforcement programs; postmarketing drug quality surveillance programs; and compliance programs for over-the-counter (OTC), nontraditional, and other drug monographs. Directs the Center's bioresearch monitoring program for human drug products.

Advises the Center Director and other Agency officials on FDA's regulatory and enforcement responsibilities for human drugs.

Initiates Center-field surveillance assignments to monitor pivotal research data submitted as part of premarketing applications. Coordinates preapproval inspections and results as part of the final product approval process.

Coordinates Center-field relations; provides support and guidance to the field on legal actions, case development, and contested cases; and reviews and decides disposition of field submissions involving deviations from standards.

Evaluates, classifies, and recommends human drug recalls and provides Center coordination with field recall activities. Monitors the resolution of all drug shortage situations involving compliance issues.

Coordinates international inspections, results, and communications with inspectorates of other nations. Participates in international standards-setting activities.

5. Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: August 14, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–21263 Filed 8–25–95; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[HSQ–230–N]

Medicare, Medicaid, and CLIA Programs; Clinical Laboratory Improvement Amendments of 1988 Exemption of Permit-Holding Laboratories in the State of New York

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: Section 353(p) of the Public Health Service Act provides for the exemption of laboratories from the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) when the State in which they are located has requirements equal to or more stringent than those of CLIA. This notice grants exemption from CLIA requirements applicable only to laboratories located within the State of New York, including New York City, that possess a valid permit, as mandated under Part 58, and Article Five of Title V of the Public Health Law of the State of New York. This title is applicable to all laboratories except those operated by an individual, licensed physician, osteopath, dentist, podiatrist, or a physician's group practice which performs laboratory tests personally or through his or her employees, solely as an adjunct to the treatment of his or her own patients.

EFFECTIVE DATE: The provisions of this notice are effective on August 28, 1995 to June 30, 2001.

FOR FURTHER INFORMATION CALL: Val Coppola, (410) 786–3406.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

Section 353 of the Public Health Service Act (PHS Act), as amended by the Clinical Laboratory Improvement Amendments of 1988 (CLIA), requires any laboratory that performs tests on human specimens to meet requirements established by the Department of Health and Human Services (HHS). Under the provisions of the sentence following section 1861(s)(14) and paragraph (s)(16) of the Social Security Act, any laboratory that also wants to be paid for services furnished to Medicare beneficiaries must meet the requirements of section 353 of the PHS Act. Subject to specified exceptions, laboratories must have a current and valid CLIA certificate to test human specimens and to be eligible for payment from the Medicare or Medicaid program. Regulations implementing

section 353 of the PHS Act are contained in 42 CFR part 493.

Section 353(p) of the PHS Act provides for the exemption of laboratories from CLIA requirements in a State that applies requirements that are equal to, or more stringent than, those of CLIA. The statute does not specifically require the promulgation of criteria for the exemption of laboratories in a State. The decision to grant CLIA exemption to laboratories within a State is at our discretion, acting on behalf of the Secretary of HHS.

Part 493, subpart E, implements section 353(p) of the PHS Act. Section 493.513 provides that we may exempt from CLIA requirements, for a period not to exceed 6 years, State licensed or approved laboratories in a State if the State meets specified conditions. Section 493.513(k) provides that we will publish a notice in the **Federal Register** announcing the names of States whose laboratories are exempt from meeting the requirements of part 493.

II. Notice of Approval of CLIA Exemption to New York State Laboratories

In this notice, we grant CLIA exemption for all specialties and subspecialties to all laboratories located in the State of New York, including New York City, that possess a valid permit to perform laboratory testing effective August 28, 1995 to June 30, 2001.

III. Evaluation of New York State (NYS) Laboratories

The following describes the process we used to determine whether we should grant exemption from CLIA requirements to permit-holding NYS laboratories.

A. Requirements for Granting CLIA Exemption

To determine whether we should grant a CLIA exemption to all laboratories within the State of New York, we conducted a detailed and in-depth comparison of NYS' requirements for its laboratories to those of CLIA and evaluated whether NYS' standards meet the requirements at § 493.513. In summary, we evaluated whether NYS—

- Has laws in effect that provide for requirements that are equal to, or more stringent than, CLIA requirements;
- Has an agency that licenses or approves laboratories meeting State requirements that also meet or exceed CLIA requirements, and would, therefore, meet the condition level requirements of the CLIA regulations;
- Demonstrates that it has enforcement authority and administrative structures and resources adequate to enforce its laboratory requirements;
- Permits us or our agents to inspect laboratories within the State;
- Requires laboratories within the State to submit to inspections by us or our agents as a condition of licensure;
- Agrees to pay the cost of the validation program administered by us and the cost of the State's pro rata share of the general overhead to develop and implement CLIA as specified in §§ 493.645(b) and 493.646; and
- Takes appropriate enforcement action against laboratories found by us or our agents not to be in compliance with requirements comparable to condition level requirements.

We also evaluated whether NYS laboratories meet the requirements and are approved in accordance with § 493.515, Federal review of laboratory requirements of State laboratory programs.

As specified in § 493.515, our review of a State laboratory program includes (but is not necessarily limited to) an evaluation of—

- Whether the State's requirements for laboratories are equivalent to, or more stringent than, the condition level requirements;
- The State's inspection process requirements to determine—
  - —The comparability of the full inspection and complaint inspection procedures to our procedures;
  - —The State's enforcement procedures for laboratories found to be out of compliance with its requirements; and
  - —The ability of the State to provide us with electronic data and reports with the adverse or corrective actions resulting from proficiency testing (PT) results that constitute unsuccessful participation in HCFA-approved PT programs and with other data we determine to be necessary for validation and assessment of the State's inspection process requirements;
- The State's agreement to—
  - —Notify us within 30 days of the action taken against any CLIA-exempt laboratory that has had its licensure or approval withdrawn or revoked or been in any way sanctioned;
  - —Notify us within 10 days of any deficiency identified in a CLIA-exempt laboratory in cases when the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public;
  - —Notify each laboratory licensed by the State within 10 days of our withdrawal of the exemption;
  - —Provide us with written notification of any changes in its licensure (or approval) and inspection requirements;
  - —Disclose any laboratory's PT results in accordance with a State's confidentiality requirements;
  - —Take the appropriate enforcement action against laboratories we find not to be in compliance with requirements comparable to condition level requirements and report these enforcement actions to us;
  - —Notify us of all newly licensed laboratories, including the specialties and subspecialties, for which any laboratory performs testing, within 30 days; and
  - —Provide to us, as requested, inspection schedules for validation purposes.

B. Evaluation of the New York State Request for CLIA Exemption

The State of New York has formally applied to us for an exemption from the CLIA requirements for the permit-holding laboratories located within the State, including those in New York City. This exemption does not apply to laboratories outside of the State of New York that possess a NYS permit to perform laboratory testing on specimens from NYS residents. In addition, this exemption does not apply to laboratories operated by an individual, licensed physician, osteopath, dentist, podiatrist, or a physician's group practice which performs laboratory tests personally or through his or her employees, solely as an adjunct to the treatment of his or her own patients.

We have evaluated the NYS CLIA exemption application and all subsequent submissions for equivalency against the three major categories of CLIA rules: The implementing regulations, the enforcement regulations, and the deeming/exemption requirements. We found the NYS Clinical Laboratory Evaluation Program, which issues, implements, and enforces regulations specified in Part 58 and Article Five of Title V of the Public Health Law of the State of New York, to administer a program that is more stringent than the CLIA program, taken as a whole. Rather than enumerating every more stringent item of the NYS requirements, we have included in this notice the more significant and exemplary areas of stringency. We performed an indepth evaluation of the NYS application to verify the State's assurance of compliance with the following subparts of part 493.

Our evaluation identified more stringent areas of the NYS requirements that apply to the laboratory as a whole. Rather than include them in the appropriate subparts multiple times, we list them here:

• NYS has extensive requirements involving laboratory safety. They include detailed standards for biosafety, chemical safety, radiological safety and regulated medical waste.

• NYS permit holding laboratories that use a laboratory information system (LIS) for any aspect of specimen testing, reporting, and/or record keeping must adhere to all applicable provisions of part 58 and including, but not limited to, the following:

—Test results are reported, archived, and maintained in an accurate and reliable manner.
—Performance and documentation of system maintenance required by the LIS manufacturer, or established and validated by the laboratory.
—All devices are maintained to ensure accurate, clear, and interference-free report transmissions.
—New or revised software and/or hardware is validated prior to use.
—Written back-up procedures are available for test reporting and retrieval when the LIS is out of service.
—The LIS is capable of generating an exact duplicate of a final test report and any preliminary report.
—LIS data and programs are protected from unauthorized use.

• NYS regulations provide requirements for forensic testing to include PT when applicable.

• NYS regulations list requirements covering paternity testing as well as workplace drug testing.

Subpart E, Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under An Approved State Laboratory Program

HCFA and the Centers for Disease Control and Prevention (CDC) staff reviewers have examined the NYS application and all subsequent submissions against the exemption requirements a State must meet in order to be granted CLIA exempt status (§ 493.513, and the applicable parts of §§ 493.515, 493.517, 493.519, and 493.521). The State has complied with the applicable CLIA requirements for exemption under this subpart.

Subpart H, Participation in Proficiency Testing for Laboratories Performing Tests of Moderate Complexity, (Including the Subcategory), High Complexity, or Any Combination of These Tests

The statute and implementing regulations of NYS for PT are more stringent than those of CLIA. Permit-holding laboratories are required by NYS statute to participate in the NYS PT program for all testing performed, provided it is offered by the program. Laboratories must enroll and participate in PT for all testing regardless of the CLIA categorization of waived, moderate, or high complexity. The PT testing available through the NYS PT program is much more extensive than the list of tests included in the CLIA regulations. The NYS program offers many more analytes, as well as additional specialties and subspecialties beyond those in the CLIA requirements.

The NYS PT program, which we have approved under CLIA, meets the requirements of subpart I, Proficiency Testing Programs for Tests of Moderate or High Complexity or Both, and in some areas, exceeds the CLIA PT program requirements. The passing scores are higher than those of CLIA for human immunodeficiency virus testing and for antibody detection and antibody identification. Because the PT program is a part of the CLIA exemption application, the State may include PT requirements that are equal to or more stringent than those of CLIA.

PT performance is closely monitored by the NYS Clinical Laboratory Evaluation Program. If a laboratory fails a particular PT event, the laboratory is notified in writing. If a laboratory fails two consecutive or two of three PT events (unsuccessful performance), the laboratory must stop testing for the unsuccessful category and/or analyte.

Laboratories that wish to add a category or a test to a permit must successfully complete two consecutive PT testing events prior to the initiation of patient testing. New laboratories must also participate successfully in two events before testing patient specimens. The CLIA regulations do not contain such requirements.

Subpart J, Patient Test Management for Moderate Complexity (Including the Subcategory), High Complexity, or Any Combination of These Tests

The NYS requirements for patient test management are more stringent than those of CLIA. Areas of stringency that exceed CLIA requirements are:

• Oral test requests are followed by a written request within 48 hours. If not received in this timeframe, the requestor is notified and the written authorization received within 30 days.

• Retention records for test requests, accession records and laboratory reports is 7 years; however, pathology reports must be retained for 20 years, and cytogenetics and genetic testing reports must be held for 25 years.

• State permit-holding laboratories may only refer specimens for testing to other laboratories that hold applicable State permits.

• A specimen received by a laboratory must not be tested or results reported if—

—It is unsatisfactory or inappropriate for the test requested;
—It has been collected, labeled, preserved, stored, transported or otherwise handled in a manner that caused it to become unsatisfactory or unreliable as a test specimen;
—It is labile and the time lapse between collection and receipt is such that it may no longer be reliable;
—The date and hour of collection, when required by the method or procedure, are not furnished; and
—The test is investigational and the laboratory does not have authorization from both the ordering individual and the patient indicating their awareness of the test limitations and investigational nature before the test is performed;

• Specific confidentiality protocols are required that must include—

—A definition of confidential information and prohibition of unauthorized access;
—The responsibilities of the director/assistant director to determine appropriate release and access to information;
—The responsibilities of employees;
—The contents of required in-service training programs;
—A mechanism for documenting attendance and attestation statements from each employee who is authorized to access confidential information; and
—The consequences of violation of confidentiality requirements which may include criminal prosecution.

• Laboratories must not report the results of a test on a specimen unless the test request information listed in the regulations has been obtained; and

• Specific requirements are listed for patient service centers (specimen collection).

Subpart K, Quality Control for Tests of Moderate Complexity (Including the Subcategory), High Complexity, or Any Combination of These Tests

The NYS requirements on quality control (QC) are more stringent than CLIA requirements as all testing including waived tests under CLIA must meet all QC requirements for high complexity testing. NYS has never allowed a phase-in for any of its QC requirements.

NYS permitted laboratories must perform method validation before a test procedure is placed into routine use and

maintain documentation of the validations of all procedures while they are in use. The linear reportable range must be established or verified for all applicable procedures. Three levels of controls must be employed for quantitative chemistry testing if calibration is not performed or validated within a run of more than 24 hours. Trilevel controls are required for quantitative immunology testing. HIV testing must be a repeatable positive and a confirmatory test performed by an appropriately permitted NYS laboratory before reporting a positive result.

The items listed above are more stringent requirements and exemplify the QC contents of the NYS program which, taken as a whole, are more stringent than the QC requirements of CLIA.

Subpart M, Personnel for Moderate Complexity (Including the Subcategory) and High Complexity Testing

The personnel requirements of NYS are more stringent than those of CLIA, taken as a whole. CLIA allows lesser qualified individuals to direct a laboratory performing moderate complexity tests, compared to the qualification requirements for individuals directing a laboratory in which high complexity testing is performed. CLIA has no requirements for an individual or laboratory engaged in waived test performance. NYS treats all testing in a manner similar to CLIA's high complexity tests. Therefore, NYS does not allow a laboratory to be directed by individuals possessing appropriate qualifications for CLIA's moderate test performance, nor does it allow a laboratory to be directed by individuals possessing the qualifications for waived test performance.

Individuals who wish to direct a permit holding laboratory must obtain a Certificate of Qualification through the Clinical Laboratory Evaluation Program. They must formally apply and submit documentation of professional and academic expertise in all the specialties and subspecialties for which the laboratory conducts testing and holds a NYS permit. The documentation is evaluated and approved by the Clinical Laboratory Evaluation Program professional staff, in accordance with the NYS Public Health law and regulations.

Subpart P, Quality Assurance for Moderate Complexity (Including the Subcategory) or High Complexity Testing, or Any Combination of These Tests

The applicable standards of the NYS regulations have been revised and are equivalent to the CLIA requirements at §§ 493.1701 through 493.1721 concerning quality assurance. NYS does, however, require laboratories to evaluate and define the relationship between the same test by different methods or different instrument three times per year. CLIA requires this evaluation twice a year.

Subpart Q, Inspection

The NYS permit-holding laboratories are routinely inspected on-site biennially. Routine inspections and complaint inspections are performed on an unannounced basis. Inspection for a laboratory first entering the program is scheduled after the facility has notified the Clinical Laboratory Evaluation Program that it is prepared to begin patient testing. A new laboratory will not receive a NYS permit until an on-site inspection is performed and all identified deficiencies have been corrected. This requirement and the use of unannounced compliance inspections are more stringent than those of CLIA. We conduct compliance inspections to monitor the correction of deficiencies and ensure that laboratories continue to meet State standards.

NYS also uses a protocol similar to that of HCFA for complaint investigations involving laboratories performing cytopathology. This inspection focuses on all cytology requirements and, if indicated, retrospective rescreens of previously read cytology cases are performed.

Subpart R, Enforcement Procedures

We have reviewed documentation of the State's enforcement authority, its administrative structure and the resources used to enforce its standards for completeness. The State appropriately applies limitations and revocations of its permits for laboratories as well as intermediate sanctions such as on-site monitoring of laboratories and imposition of civil money penalties.

The State has provided us with the mechanism it currently uses to monitor the PT performance of its laboratories. The action NYS takes for unsuccessful PT participation is more stringent than those of CLIA's enforcement policy. A permitted laboratory must suspend testing for the unsuccessful analyte or category until it successfully remediates the problem area. The State has provided appropriate documentation demonstrating that its enforcement policies and procedures are equivalent to those of CLIA.

IV. Federal Validation Inspections and Continuing Oversight

We will conduct the Federal validation inspections of CLIA-exempt laboratories, as specified in § 493.517, on a representative sample basis as well as in response to substantial allegations of noncompliance (complaint inspections). The outcome of those validation inspections will be our principal means for verifying the appropriateness of the exemption given to laboratories in NYS. This Federal monitoring is an on-going process. The State of New York will provide us with survey findings for each laboratory selected for validation.

V. Removal of Approval of New York State Exemption

We will remove the CLIA exemption of laboratories located in NYS that possess a valid permit if we determine the outcome and comparability review of validation inspections are not acceptable, as described under § 493.521, or if the State fails to pay the required fee every 2 years as required under § 493.646.

VI. Laboratory Data

In accordance with § 493.513(d)(2)(iii), NYS will provide us with changes to a laboratory's specialties or subspecialties based on the State's survey and with changes in a laboratory's permit status.

VII. Required Administrative Actions

CLIA is intended to be generally a user-fee funded program. The registration fee paid by the laboratories is intended to cover the cost of the development and administration of the program. However, when a State's application for exemption is approved, we may not charge a fee to laboratories in the State that are covered by the exemption. We will collect the State's share of the costs associated with CLIA from the State. Section 493.645 specifies that HHS will assess fees that a State must pay for the following:

- Costs of Federal inspection of laboratories in the State to verify that standards are enforced in an appropriate manner. The average cost per validation survey nationally is multiplied by the number of surveys that will be conducted.
- Costs incurred for Federal investigations and surveys triggered by complaints that are substantiated. We

will bill the State on an semi-annual basis. We anticipate that most of these surveys will be referred to the State and that there will be little Federal activity in this area.

• The State's proportionate share of general overhead costs for the items and services it benefits from and only for those paid for out of registration or certificate fees we collected.

In order to estimate the State's proportionate share of the general overhead costs, we determined the ratio of laboratories in the State to the total number of laboratories nationally. In that the general overhead costs apply equally to all laboratories, we determined the cumulative overhead costs that should be borne by the State of New York.

The State of New York has agreed to pay us its pro rata share of the overhead costs and anticipated costs of actual validation and complaint investigation surveys. A final reconciliation for all laboratories and all expenses will be made. We will reimburse the State for any overpayment or bill it for any balance.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Section 353 of the Public Health Service Act (42 U.S.C. 263a).

Dated: August 2, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–21264 Filed 8–25–95; 8:45 am]

BILLING CODE 4120–01–P

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 60 FR 34550–51, dated July 3, 1995) is amended to reflect (1) the establishment of the Office of Health Communication within the Office of the Director, National Center for Injury Prevention and Control (NCIPC); and (2) the revision of the functional statement for the Office of Statistics, Programming, and Graphics; and (3) the retitling of the Office of Statistics, Programming, and Graphics to the Office of Statistics and Programming.

Section HC–B, *Organization and Functions*, is hereby amended as follows:

After the functional statement for the *Office of Program Management and Operations (HCE13)*, insert the following:

Office of Health Communication (HCE14). (1) Plans, develops, coordinates, and evaluates NCIPC's marketing, public affairs, publications, graphics, and technical information activities for intentional injury, unintentional injury, and acute care and rehabilitation; (2) in conjunction with the CDC Office of Health Communication, collaborates with organizations in the public and private sectors to market injury prevention and control messages; (3) develops educational material on injury prevention and control, including print and video products, to be used in the center's marketing activities; (4) disseminates injury control information to public and professional audiences; (5) in conjunction with the CDC Office of Public Affairs, interacts with the news media to ensure that injury topics are covered accurately and remain high on the public agenda; (6) provides expert consultation on the effective use and design of graphic materials for presentations, publications, and exhibits; (7) designs and produces professional quality graphic materials for use in NCIPC presentations and publications and designs and electronically typesets publications; (8) develops, maintains, and manages a graphics information retrieval system that allows ready access to slides and graphic presentations on injury topics; (9) provides expert consultation on the development and production of publications; (10) manages the clearance, editing, and production of NCIPC publications; (11) manages NCIPC's technical information resources, including developing and maintaining injury-related databases and a library of information on injury-related topics; (12) coordinates the center's information sharing activities, including involvement on INTERNET; (13) serves as NCIPC liaison with the CDC Office of Public Affairs, the CDC Office of Health Communication, and other Centers, Institute, and Offices on matters of marketing, public affairs, graphics, publications, and technical information resources; (14) in carrying out these functions, collaborates with other PHS agencies, Federal and State departments and agencies, and private organizations, as appropriate.

Office of Statistics and Programming (HCE2). (1) Develops, evaluates, and implements innovative statistical, computer programming, and data management methods for application to injury surveillance, epidemiologic studies, and programmatic activities; (2) provides expert consultation in statistics, programming, and data management to all NCIPC staff; (3) collaborates with NCIPC scientists on epidemiologic studies and provides associated technical advice in the areas of study design, sampling, and the collection, management, analysis, and interpretation of injury data; (4) coordinates, manages, maintains and provides tabulations from national surveillance systems and other data sources that contain national, State and local data on injury morbidity and mortality; (5) prepares and produces high quality statistical reports and publications material for information presentation and dissemination by NCIPC staff; (6) advises the Office of the Director, NCIPC, in the area of data and systems management and on surveillance and statistical analysis issues relevant to injury program planning and evaluation; (7) in carrying out the above functions, collaborates with other Divisions/Offices in NCIPC, CDC Centers/Institute/Offices, PHS agencies, and other Federal departments and agencies, and private organizations as appropriate.

Office of the Director (HCE21). (1) Plans, directs, and manages the activities of the Office of Statistics and Programming and provides administrative and management support; (2) reviews reports, publications, and other materials for statistical integrity and validity; (3) makes recommendations and provides technical advice to the Office of the Director, NCIPC, on statistical and surveillance issues relevant to injury prevention and control; (4) coordinates Office activities with other Offices and Divisions within NCIPC, other CDC components, PHS agencies, other Federal agencies, State and local health departments, and other public and private organizations, as appropriate.

Effective Date: August 15, 1995.

David Satcher,

Director, Centers for Disease Control and Prevention.

[FR Doc. 95–21301 Filed 8–25–95; 8:45 am]

BILLING CODE 4160–18–M

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 60 FR 34550–51, dated July 3, 1995) is amended to reflect the consolidation of related laboratory research functions within the national Center for Infectious Diseases (NCID) to enhance coordination of HIV, STD, and TB activities throughout the Centers for Disease Control and Prevention (CDC).

Section HC–B, *Organization and Functions,* is hereby amended as follows:

Delete the title and functional statement for the *Division of Sexually Transmitted Diseases Laboratory Research (HCRN)* and the *Office of the Director (HCRN1),* and insert the following:

Division of AIDS, STD, and TB Laboratory Research (HCRN). (1) Develops and evaluates laboratory methods and procedures for the diagnosis and characterization of infections caused by HIV and other human retroviruses, other sexually transmitted diseases, and mycobacteria, including M. tuberculosis; (2) provides laboratory support for the surveillance, epidemiologic, and clinical activities of the National Center for Prevention Services and other Centers/Institute/Offices; (3) conducts applied research on immune mechanisms that occur in microbial infection, particularly infection with human immunodeficiency virus; (4) conducts applied research on the pathogenesis of microbial infections, particularly infection with M. tuberculosis; (5) conducts laboratory studies of hemophilia and other coagulating disorders; (6) provides reference laboratory services and assists in standardizing and providing laboratory reagents; (7) serves as a World Health Organization Collaborating Center; (8) conducts epidemiologic studies of HIV-infected and uninfected persons with hemophilia and their families; (9) assists in designing, implementing, and evaluating prevention and counseling programs for HIV-infected persons with hemophilia and their families; (10) coordinates research on opportunistic infections in HIV-infected persons.

Office of the Director (HCRN1). (1) Plans, directs, and coordinates the activities of the Division; (2) develops goals and objectives and provides leadership, policy formulation, and guidance in program planning and development; (3) provides program management and administrative support services for AIDS/STD/TB laboratory research activities, both domestic and international.

Gonorrhea, Chlamydia, an Chancroid Branch (HCRN2). (1) Performs research and development on gonorrhea, chancroid, donovanosis, bacterial vaginosis, and chlamydial and mycoplasmal infections; (2) conducts or participates in clinical, field, and laboratory research to develop, evaluate, and improve laboratory methods and materials used in the diagnosis of STDs; (3) provides consultation and reference/diagnostic services for STDs other than syphilis.

Chlamydia Section (HCRN22). (1) Performs research and development on the pathogenesis, genetics, immunology, and epidemiology of chlamydial and mycoplasmal infections and donovanosis; (2) conducts or participates in clinical, field, and laboratory research to develop, evaluate, and improve laboratory methods and materials used in the diagnosis of these agents; (3) provides consultation and reference/diagnostic services for these agents.

Gonorrhea and Chancroid Section (HCRN24). (1) Performs research and development on the pathogenesis, genetics, immunology, and epidemiology of gonorrhea, chancroid, and bacterial vaginosis; (2) conducts or participates in clinical, field, and laboratory research to develop, evaluate, and improve laboratory methods and materials used in the diagnosis of these agents; (3) provides consultation and reference/diagnostic services for these agents.

Hematologic Diseases Branch (HCRN3). (1) Provides national leadership in the investigation and prevention of diseases of blood including hemophilia; (2) conducts investigations of hematologic disorders and the role of etiologic agents in the development of these disorders; (3) conducts applied and operational research related to disease definition, etiology, diagnosis, complications, and prevention of hemophilia and acquired hematologic diseases; (4) conducts research on the prevention of the chronic complications of hematologic disorders; (5) provides technical assistance and reference and diagnostic services to State and local health departments, other Federal agencies, and other organizations; (6) conducts research to improve laboratory methodologies and materials; (7) provides training services to states, localities, and other nations in investigation, diagnosis, prevention, and control of hematologic diseases; (8) conducts epidemiologic studies in persons with hemophilia and chronic hematologic disorders and their families; (9) assists in designing, implementing, and evaluating prevention and counseling programs for persons with hemophilia and their families.

Laboratory Section (HCRN32). (1) Conducts applied research to develop, evaluate, improve, and standardize the methods and procedures for the microbiologic classification, surveillance, and prevention of hematologic diseases; (2) participates in studies directed at determining methods of preventing hematologic disorders and their complications; (3) provides diagnostic support for epidemiologic studies and epidemic aids on emerging hematologic diseases; (4) determines the mechanisms of pathogenesis of chronic hematologic disorders and their complications; (5) conducts research and provides reference services on hematologic diagnostic techniques; (6) maintains the national reference laboratory for blood coagulation and other hematologic disorders.

Surveillance and Epidemiology Section (HCRN33). (1) Designs and manages a surveillance system to evaluate the incidence, morbidity, and mortality of hemophilia and other hematologic disorders; (2) plans, develops, and coordinates special surveys and populations studies in selected geographic areas to monitor and assess the complications of hemophilia; (3) determines, plans, conducts, and coordinates surveillance training for State and local health department staff; (4) collects, analyzes, and prepares reports to document the prevalence and incidence of hemophilia and other blood diseases in the United States and provides this information to the scientific community through reports, publications, and public access data sets; (5) provides epidemiologic and medical consultation and technical assistance, including epidemic aids, to State and local health departments, other governmental agencies, and other public and private organizations in the investigation of hematologic disorders; (6) works closely with CDC organizations in applying prevalence and incidence data to target and evaluate hematologic disease prevention program; (7) designs and conducts epidemiologic studies to determine risk factor and co-factors for chronic hematologic disorders and their

complications; (9) provides statistical support in the design and analysis of data from surveillance and epidemiologic studies.

Treponemal Pathogenesis and Immunobiology Branch (HCRN4). (1) Performs research and development on syphilis and other treponematoses, such as yaws and endemic syphilis; (2) conducts or participates in clinical, field, and laboratory trials to develop, evaluate, and improve laboratory methods and materials used in the diagnosis of syphilis; (3) provides consultation and reference/diagnostic services for syphilis; (4) conducts research in the cellular and humoral aspects of the immune response to the treponemes and immunochemical studies of the organism to define antigenic determinants; (5) serves as the WHO International Collaborating Center for Reference and Research in Syphilis Serology.

Treponemal Immunobiology Section (HCRN42). (1) Conducts research leading to an understanding of the *in vitro* growth requirements of treponemes; (2) studies the human cellular immune response to infection with HIV and *Treponema pallidum;* (3) provides reference diagnostic services for syphilis and other treponematoses; (4) prepares reference reagents for nontreponemal tests; (5) conducts clinical evaluations; (6) serves as a WHO Collaborating Center for the Treponematoses.

Treponemal Pathogenesis Section (HCRN44). (1) Conducts research leading to an understanding of the inter-relationship of the host and the microorganism through studies of the antigenic composition of the treponeme, the role of treponemal enzymes in the production of the infection, *in vivo* growth requirements, and humoral immune response of the host; (2) prepares reference reagents for treponemal tests; (3) produces monoclonal antibodies; (4) determines differences between strain isolates from patients with HIV infection and syphilis and isolates from patients with syphilis alone.

HIV Laboratory Investigations Branch (HCRN5). (1) Provides laboratory support for epidemiologic and surveillance studies in collaboration with the National Center for Prevention Services; (2) conducts investigations of viral pathogenesis and evaluation of control measures through the use of animal models and *in vitro* techniques employing clinical specimens from HIV-infected individuals; (3) trains, performs reference testing, and develops certain reference reagents for HIVs for public health laboratories in the United States and the World Health Organization; (4) serves as a reference laboratory for the isolation, detection, and serologic testing for HIV in clinical samples and assists in providing laboratory training to public health and other laboratory personnel; (5) assists in standardizing and providing reference reagents for HIV; (6) serves as a World Health Organization Reference Center to provide international consultation and technical assistance on laboratory procedures for HIV isolation, detection, and characterization; (7) develops and evaluates procedures for the isolation and characterization of HIV; (8) develops and evaluates new and improved methods for the serodiagnosis of HIV infection and detection of viral genetic information in infected cells; (9) conducts investigations of HIV and HIV-infected cells to determine how the virus impairs the immune system and to identify indicators for disease progression; (10) conducts investigations to identify and characterize new HIV isolates and to develop new diagnostic tests for these isolates to determine the prevalence in various populations; (11) collaborates with other Federal, academic, and private laboratories.

Cell Biology Section (HCRN52). (1) Develops and evaluates laboratory methods and procedures for the isolation and characterization of HIV; (2) conducts research into the molecular virology of HIV virulence, latency, replication, and pathogenesis as pertains to their role in the progression of AIDS and transmittance of the virus; (3) provides reference isolation services for HIV; (4) identifies mixed infections in association with HIV and conducts research at a molecular level into their impact on viral pathogenesis and AIDS; (5) assists in providing training to public health laboratorians and consultation to CDC as a whole on the isolation and culture of HIV; (6) provides international consultation and technical assistance on laboratory methods for HIV isolation and characterization.

Developmental Technology Section (HCRN53). (1) Develops and evaluates laboratory methods for the detection of HIV infection and understanding of HIV pathogenesis; (2) cooperates with industry in conducting clinical trials and other evaluations of new AIDS diagnostic tests; (3) conducts quality assurance program for assay materials used in HIV surveillance; (4) assists in standardization and provision of reference reagents; (5) assists in providing training and technical assistance to public health laboratorians on the serologic testing for HIV antigens and antibodies; (6) provides international training and technical assistance on laboratory methods for HIV serology and other tests for HIV infection.

Molecular Biology Section (HCRN54). (1) Develops, evaluates, improves, and standardizes DNA probe technology including gene amplification for the diagnosis, characterization, and understanding of the pathogenesis of HIV; (2) investigates the molecular basis of the interactions between HIV and host cells with an emphasis on the requirement of human factors necessary for the expression and replication of HIV; (3) participates in a national screening program for the evaluation and characterization of HIV nucleotide sequences for determining evolution of HIV; (4) provides intramural and extramural technical expertise and assistance in professional training of molecular approaches to the identification of HIV and other infectious agents; (5) conducts molecular investigations on the biochemical and biological properties of HIV proteins.

Serology Section (HCRN55). (1) Provides epidemic aid and reference serologic testing services for HIV; (2) assists in the evaluation of improved methods for HIV serodiagnosis; (3) assists in providing training to public health laboratorians on serologic testing of HIV; (4) assists in the standardization and provision of reference reagents; (5) provides national and international consultation and technical assistance on laboratory methods for HIV serology.

Immunology Branch (HCRN6). (1) Conducts applied research on immune mechanisms that occur in microbial infection, particularly infection with human immunodeficiency virus; (2) conducts studies on natural history, mechanisms of infection, immunopathogenesis, and the biology of host-microbe interaction to distinguish immune responses that are effective versus deleterious and identifies targets for immune intervention; (3) develops, evaluates, and improves assay procedures for immune mechanisms and diagnosis of diseases; (4) performs immunologic diagnostic testing for laboratories and organizations within NCID and CDC, and outside the Agency; (5) performs or collaborates in the performance of clinical, epidemiologic, and field studies of immunologic disease states.

Retrovirus Diseases Branch (NCRN7). (1) Conducts research to further understanding of the human and zoonotic retroviruses, the diseases they cause, the modes of transmission, and the means for their control through

virus detection, isolation, and characterization, by virologic, molecular, and immunologic methodologies; (2) determines virus genotypic variation, phenotypic (serologic) variation, pathogenesis, tropisms, persistence, virulence, and transmissibility; (3) conducts field epidemiologic investigations of the prevalence, distribution, trends, and risk factors associated with non-AIDS retroviral diseases; (4) conducts research to further the understanding of how human retroviruses modulate the function of infected cells, and how intracellular signals regulate retroviral gene expression; (5) develops collaborations with other CDC scientists and scientists from external labs to maximize resources and promote scientific progress and accomplishments; (6) develop collaborations with industry to promote commercialization of useful technology, methodologies or reagents resulting from section research.

Immunology Section (HCRN72). (1) Develops new methods to improve the detection of immunologic markers of retrovirus infection and to enhance prevention of retrovirus-associated morbidity and mortality through immunologic research; (2) analyzes structural and functional characteristics of retroviral antigens in order to develop more sensitive and specific serologic assays for retroviral detection; (3) investigates host cellular and humoral immune responses to retroviral infection to determine factors that regulate retroviral disease expression; (4) analyzes soluble factors that modulate retroviral expression; (5) provides reference diagnostic testing for samples with unusual seroreactivity or from patients with unusual clinical presentation; (6) determines the natural history of retroviruses by characterizing samples collected world-wide; (7) develops collaborations with other CDC scientists and scientists from external labs to maximize resources and promote scientific progress and accomplishments; (8) develops collaborations with industry to promote commercialization of useful technology, methodologies or reagents resulting from section research.

Molecular Genetics Section (HCRN73). (1) Provides molecular genetics expertise for public health investigations concerning human and zoonotic retroviruses; (2) develops and applies new molecular technologies to monitor and investigate retroviral epidemiology, natural history, and pathogenesis; (3) identifies and characterizes new and emerging retroviruses by novel molecular methods; (4) investigates viral load and viral mutagenesis to determine correlations with disease progression *in vivo;* (5) studies molecular level virus-host interactions that promote viral replication and transmission; (6) develops collaborations with other CDC scientists and scientists from external labs to maximize resources and promote scientific progress and accomplishments; (7) develops collaborations with industry to promote commercialization of useful technology, methodologies or reagents resulting from section research.

Virology Section (HCRN74). (1) Enhances prevention of retrovirus-associated morbidity and mortality through laboratory research focused on the biology of human and zoonotic retroviruses and their target cells in the host; (2) investigates the factors that govern the progression from HIV-infection to AIDS and interventions that may prevent AIDS; (3) determines the factors that control the regulation of retroviral expression through studies of retroviral latency, activation and replication; (4) develops improved methods for culture and identification of known and novel retroviruses; (5) discovers new markers for retrovirus infection and disease progression that will further the understanding of retroviral epidemiology; (6) develops new cellular models for retrovirus studies; (7) develops collaborations with other CDC scientists and scientists from external labs to maximize resources and promote scientific progress and accomplishments; (8) develops collaborations with industry to promote commercialization of useful technology, methodologies or reagents resulting from section research.

Tuberculosis/Mycobacteriology Branch (HCRN8). (1) Provides laboratory support for epidemic investigations and special studies of tuberculosis and other mycobacterial diseases; (2) conducts research into immunology of mycobacterial infections, pathogenic mechanisms, and molecular basis of diseases; (3) provides reference diagnostic services to State public health laboratories; (4) administers grants and cooperative agreements with States and others to upgrade laboratory activities and provide special services; (5) develops, evaluates, and/or improves methods for classifying and identifying mycobacteria and mycobacterial diseases; (6) develops tissue culture and animal models of mycobacterial diseases that can be used in studies of chemotherapy, immunotherapy and vaccine evaluations; (8) studies problems of isolation, taxonomy, and ecology of mycobacteria; (9) investigates mycobacteria for identification of virulence factors.

Diagnostic Mycobacteriology Section (HCRN82). (1) Provides laboratory support to the Division of Tuberculosis Elimination and others for epidemic investigations of tuberculosis; (2) manages the Regional Network for RFLP typing and maintains the national database describing patterns of isolates from throughout the United States; (3) develops new methods that subtype mycobacteria for use as epidemiologic markers; (4) provides reference services for identification and drug susceptibility testing of referred isolates; (5) develops new diagnostic methods for rapid identification and susceptibility testing of Mycobacterium species; (6) evaluates newly developed diagnostic tests and procedures; (7) provides consultation and training to State, federal and municipal public health laboratories; (8) serves as the primary CDC focus for studies of nontuberculosis Mycobacterium species; (9) supports and encourages studies on role of nontuberculous mycobacteria in human and animal disease; (10) studies characteristics of Mycobacterium species that infect humans.

Immunology and Molecular Pathogenesis Section (HCRN83). (1) Conducts studies to define the molecular genetics of mycobacteria and develop molecular tools for the detection and prevention of mycobacterial infections; (2) defines mechanisms of drug resistance in mycobacteria and develops methods for rapid detection of resistance; (3) conducts studies to define the role of host-pathogen factors and immunologic mechanisms in disease processes and protective immunity; (4) develops, evaluates, and improves immunologic/serologic methods for the diagnosis and prevention of mycobacterial diseases; (5) conducts studies to identify and characterize virulence factors, pathogenic mechanisms, and the molecular basis of disease caused by mycobacteria; (6) develops and evaluates agents for the treatment and prevention of mycobacterial diseases; (7) develops animal models for study of detection, treatment, and characteristics of mycobacterial diseases; (8) serves as the primary CDC focus for studies of Hansen disease (leprosy).

Delete the functional statement for *Emerging Bacterial and Mycotic Diseases Branch (HCRP8), Division of Bacterial and Mycotic Diseases (HCRP)* and insert the following: (1) In collaboration with other CDC Centers/Institute/Offices and other NCID Divisions, conducts laboratory studies

and provides epidemic aid, surveillance, and consultation on the control of emerging, reemerging, and opportunistic bacterial, fungal, actinomycotic, and nontuberculosis mycobacterial diseases; (2) provides reference and diagnostic activities for agents causing these diseases and for the identification of unknown bacterial, fungal, and actinomycotic isolates associated with human disease; (3) performs studies to determine host-parasite factors related to human diseases caused by emerging, reemerging, and opportunistic bacterial, fungal, actinomycotic, and nontuberculosis mycobacterial agents; (4) coordinates and collaborates in national and international studies and surveillance for bacterial, fungal, mycobacterial, and actinomycotic diseases; (5) develops and evaluates methods for the diagnosis of emerging, reemerging, and opportunistic bacterial, fungal, and actinomycotic diseases; (6) develops, implements, and evaluates prevention strategies for these diseases; (7) collaborates with other CDC Centers/Institute/Offices, NCID Divisions, State and Federal agencies in addressing reemerging bacterial and mycotic diseases.

Delete the functional statement for the *Epidemiology Section (HCRP82), Emerging Bacterial and Mycotic Diseases Branch (HCRP8),* and insert the following: (1) Conducts epidemic investigations, surveillance, and special studies of emerging, reemerging, and opportunistic bacterial, fungal, actinomycotic, and mycobacterial diseases; (2) provides clinical and epidemiologic consultation on these diseases; (3) coordinates activities related to opportunistic infections in compromised hosts for the Division.

Delete the title and functional statement for the *Tuberculosis and Other Mycobacterioses Laboratory Section (HCRP85), Emerging Bacterial and Mycotic Diseases Branch (HCRP8), Division of Bacterial and Mycotic Diseases (HCRP).*

Delete the title and functional statement for the *Retrovirus Diseases Branch (HCRUA), Division of Viral and Rickettsial Diseases (HCRU).*

Effective Date: August 15, 1995.

David Satcher,

Director, Centers for Disease Control and Prevention.

[FR Doc. 95–21302 Filed 8–25–95; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–4212–11; COC48503]

Realty Action: Recreation and Public Purposes (R&PP) Act Classification; Colorado

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands in Rio Blanco County, Colorado, have been examined and found suitable for classification for lease or conveyance to The Benevolent and Protective Order of the Elks Lodge No. 1907 under the provisions of the Recreation and Public Purposes Act (R&PP) (43 U.S.C. 869 et seq.), as amended by the Recreation and Public Purposes Amendment Act of 1988. The Benevolent and Protective Order of the Elks proposes to use the lands for a recreation facility and trap shooting range.

Sixth Principal Meridian, Colorado

T. 1 N., R. 102 W.,
Section 12, W½E½SW¼NW¼, W½SW¼NW¼.

The lands, containing 30 acres, are not needed for federal purposes.

Lease or conveyance is consistent with current BLM land use planning, and would be in the public interest. A lease or patent if issued will be subject to the following terms, conditions, and/or reservations:

1. Provisions of the Recreation and Public Purposes Act, the Recreation and Public Purposes Amendment Act, and all applicable regulations of the Secretary of the Interior.

2. A right-of-way reservation of ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 E.S.C. 945).

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. A lease or patent may contain terms and conditions to indemnify the United States and its officers, agents, representatives, and employees from claims, loss, damage, actions, causes of action, expense, and liability attributable to the disposal or release of hazardous substances on the land described above. A patent may be issued without a reverter provision for some or all of the land, depending upon the location of sites potentially susceptible to disposal of or release of hazardous substances.

5. Compliance with all Federal and State laws applicable to their disposal, placement, or release of hazardous substances. R&PP classification COC7703 dated October 1, 1980, is hereby terminated. R&PP classification COC36380, dated May 4, 1983, is hereby amended to delete the lands described herein.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, White River Resource Area, 73544 Highway 64, Meeker, Colorado.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act, conveyance under section 209(b) of the Federal Land Policy and Management Act, and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication in the **Federal Register**, interested persons may submit comments regarding the proposed lease or conveyance or classification of the lands to the Associate District Manager, Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Classification Comments: Interested parties may submit comments involving the suitability of the land for recreation facilities and trap shoot range. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a recreation facility and trap shoot range. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective on or before October 27, 1995.

FOR FURTHER INFORMATION CONTACT:

Naomi Moody, Realty Specialist, or Vern Rholl, Realty Specialist, White River Resource Area, P.O. Box 928, Meeker, Colorado 81641. (970) 878–3601.

Dated: August 17, 1995.

Robert W. Schneider,

Associate District Manager.

[FR Doc. 95–21221 Filed 8–25–95; 8:45 am]

BILLING CODE 4310–JB–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32755]

CSX Transportation, Inc.—Trackage Rights Exemption—Norfolk and Western Railway Company

Norfolk and Western Railway Company (NW) has agreed to grant overhead trackage rights to CSX Transportation, Inc. (CSXT) as follows: from the connection track in the northwest quadrant between the tracks of CSXT and NW at or near NW's milepost D122.6 at St. Joe, IN to the southernmost connection between NW and the industrial trackage of Steel Dynamics, Inc. (SDI) in Wilmington Township, DeKalb County, IN, at or near NW's milepost D118.6, a total distance of approximately 3.5 miles. The proposed transaction will allow CSXT to provide direct rail service to SDI's mill, increase intramodal competition, and allow CSXT to provide more efficient service than would be available on a joint route arrangement. The trackage rights were scheduled to become effective on August 14, 1995.[1]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: John W. Humes, Jr., 500 Water St., J–150, Jacksonville, FL 32202.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: August 21, 1995.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–21259 Filed 8–25–95; 8:45 am]

BILLING CODE 7035–01–P

[1] CSXT is restricted to using the trackage rights to provide rail service only to SDI.

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–31,111B]

Brazos Gas Compressing Company Meadville, PA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 2, 1995, applicable to all workers of the subject firm. The notice will soon be published in the **Federal Register**.

New information was received from the company which shows that when reporting the location for the subject facility, the company incorrectly reported Brazos Gas's Meadville location in the State of Texas. The location is Meadville, Pennsylvania. The Department is amending the certification to identify the correct location.

The amended notice applicable to TA–W–31,111B is hereby issued as follows:

''All workers of Brazos Gas Compressing Company, Meadville, Pennsylvania who become totally or partially separated from employment on or after May 26, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 17th day of August 1995.

Arlene O'Connor,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–21266 Filed 8–25–95; 8:45 am]

BILLING CODE 4510–30–M

Bureau of Labor Statistics

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Producer Price Indexes, by Industry

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning a proposed revision of the collection, ''Producer Price Indexes, by Industry.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the address section of this notice.

DATES: Written comments must be submitted on or before October 27, 1995.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue N.E., Washington, DC 20212. For further information contact Ms. Kurz on 202–606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Producer Price Indexes (PPI), which is one of the nation's leading economic indicators, is used as a measure of price movements, an indicator of inflationary trends in the economy, an inventory valuation measure for some organizations, and a measure of purchasing power of the dollar at the primary market level. It is also used in market research and as a basis for escalation in long-term contracts.

II. Current Actions

BLS is proposing revisions to PPI disaggregation and resampling procedures, and is planning pilot projects to implement electronic collection of survey data.

New Disaggregation Procedures. The purpose of this proposed new method is to define a publication structure that is publishable virtually in its entirety, meets user needs, is continuous, and permits meaningful classification of current production. In order to satisfy the publishability of the entire structure, price quotes will be collected using a modified first step of disaggregation. Quotes will be spread across predetermined product categories which correspond to the publication cells for a Standard Industrial Classification (SIC). The design of the new disaggregation method provides for collection of enough quotes in the smaller publication cells so that they will be publishable. The result of the new method will be that there will be a smaller number of quotes for the larger cells and a larger number of quotes for

the smaller cells compared to how quotes would be spread if normal disaggregation were used.

New Resampling Procedures. The purpose of this proposed new process, ''recycling without resampling,'' is to allow BLS to update the weights and composition of industry indexes without having to resample the entire industry. The process will permit BLS to accommodate changes in the current SIC structure more efficiently. Augmentation sampling of just the additional product line(s) covered by the new SIC structure, rather than resampling the entire industry, will now be operationally feasible. This capability is a major breakthrough and will enable BLS to resample volatile industries more frequently while cutting the expenses of data collection.

Electronic Collection. BLS is planning to conduct several pilot projects over the next few years to collect PPI data from survey respondents electronically. A range of electronic collection methods will be used including collection via facsimile, the Internet, and Electronic Data Interchange (EDI).

Type of Review: Revision.

Agency: Bureau of Labor Statistics.

Title: Producer Price Indexes, by Industry.

OMB Number: 1220–0008.

Frequency: One-time and monthly.

Affected Public: Businesses or other for-profit; small businesses or organizations; and Federal Government.

Number of Respondents: 28,700.

Estimated Time Per Respondent: Initiation—2 Hours; repricing—18 minutes.

Total Burden Hours: 347,949 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the ICR; they also will become a matter of public record.

Signed at Washington, D.C., this 22nd day of August, 1995.

W. Stuart Rust, Jr.,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 95–21267 Filed 8–25–95; 8:45 am]

BILLING CODE 4510–24–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket (95–077)]

Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Alan R. Hargens of Saratoga, California, has requested an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,133,339, entitled ''Exercise Method and Apparatus Utilizing Differential Air Pressure.'' An undivided interest in this patent is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. Harry Lupuloff, Senior Patent Attorney, NASA Headquarters.

DATE: Responses to this Notice must be received by October 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, NASA Headquarters, Code GP, Washington, DC 20546; (202) 358–2067.

Dated: August 18, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–21290 Filed 8–25–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

Duke Power Company, et al.; Catawba Nuclear Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–35 and NPF–52, issued to Duke Power Company, et al. (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed action would change the Technical Specifications (TS) to (a) allow the maximum enrichment for fuel stored in the fuel pools to increase from a nominal value of 4.0 to 5.0 weight percent Uranium-235, (b) establish new loading patterns for new and irradiated fuel in the spent fuel pool consistent with associated burnup criteria up to a maximum value of 60 GWD/MTU to accommodate this increase, (c) add a TS to establish a limit for boron concentration for all modes of operation, (d) add BASES to correspond to the TS that were added, (e) add TS to reflect limits for fuel storage criticality analysis, and (f) reformat the TS to bring them more in line with the standard format in the NRC report NUREG–1431, ''Standard Technical Specifications Westinghouse Plants.''

The proposed action is in accordance with the licensee's application for amendments dated September 19, 1994, as supplemented by letters dated April 26 and June 19, 1995.

The Need for the Proposed Action

The proposed action is needed so that the licensee can use higher fuel enrichment to provide additional flexibility in the licensee's reload design efforts and to increase the efficiency of fuel storage cell use in the spent fuel pools.

Environmental Impacts of the Proposed Action:

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would permit storage of fuel enriched to a nominal 5.0 weight percent Uranium-235. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation were published and discussed in the staff assessment entitled, ''NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation,'' dated July 7, 1988, and published in the **Federal Register** (53 FR 30355) on August 11, 1988, as corrected on August 24, 1988 (53 FR 32322), in connection with Shearon Harris Nuclear Power Plant, Unit 1: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to this action would be to deny the requested amendments. Such action would not reduce the environmental impacts of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the ''Final Environmental Statement Related to the Operation of Catawba Nuclear Station Units 1 and 2,'' dated January 1983.

Agencies and Persons Consulted

In accordance with its stated policy, on July 21, 1995, the NRC staff consulted with the South Carolina State official, Mr. V. Autrey of the Bureau of Radiological Health, Department of Health and Environmental Controls, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

For further details with respect to this action, see the licensee's letter dated September 19, 1994, as supplemented by letters dated April 26 and June 19, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina.

Dated at Rockville, Maryland, this 15th day of August 1995.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–21270 Filed 8–25–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–424]

Georgia Power Company, et al.; Vogtle Electric Generating Plant, Unit 1 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. NPF–68, issued to Georgia Power Company, et al. (the licensee) for operation of the Vogtle Electric Generating Plant (Vogtle), Unit 1, located at the licensee's site in Burke County, Georgia.

Environmental Assessment

Identification of Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application dated May 12, 1995, as supplemented by letter dated July 6, 1995. The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), to the extent that a one-time extension of approximately 18 months would permit rescheduling the third containment integrated leak rate test (ILRT) from the March 1996 refueling outage to the September 1997 refueling outage. The requirement of 10 CFR Part 50, Appendix J, Section IV.A, to perform a Type A test following any major modification to the primary containment boundary will be maintained. No such modifications have been made to the containment since the last Type A test in 1993, nor are any planned during the March 1996 refueling outage.

The Need for the Proposed Action

The proposed action is needed to permit the licensee to defer the Type A ILRT from the spring 1996 refueling outage to the September 1997 refueling outage, thereby saving the cost of performing the test and eliminating the test from the 1996 outage.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed one-time exemption would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents. In accordance with Section III.D.1.(b) of Appendix J to 10 CFR Part 50, the licensee will continue to be required to conduct the Type B and C local leak rate tests, which historically have been shown to be the principal means of detecting containment leakage paths with the Type A tests confirming the Type B and C test results. In addition, even though the licensee would be exempt from the requirement to perform the Type A integrated leak rate test, they have committed to performing a general containment inspection as specified in 10 CFR Part 50, Appendix J, Section V.A if the requested exemption is granted. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary. The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to this action would be to deny the request for exemption. Such action would not reduce the environmental impacts of plant operations.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of the Vogtle Electric Generating Plant.

Agencies and Persons Consulted

In accordance with its stated policy, on July 5, 1995, the staff consulted with the Georgia State official, Mr. James Hardeman of the Environmental Protection Division, Georgia Department of Natural Resources, regarding the environmental impact of the proposed action. The state official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's letters dated May 12, 1995, and July 6, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia.

Dated at Rockville, Maryland, this 21st day of August 1995.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–21269 Filed 8–25–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–413 and 50–414]

Duke Power Company, et al.; Catawba Nuclear Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–35 and NPF–52, issued to Duke Power Company, et al. (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise Technical Specification (TS) 5.3.1 ''Fuel Assemblies'' to (a) allow an increase in the maximum specified enrichment for fuel assemblies from a nominal value of 4.0 to 5.0 weight percent Uranium-235, and (b) provide flexibility in the repair of fuel assemblies containing damaged and leaking fuel rods by reconstituting the assemblies in accordance with the guidance in Generic Letter 90–02, Supplement 1, ''Alternative Requirements For Fuel Assemblies In The Design Features Section of Technical Specifications.'' The application is also generally consistent with the format and content of the improved Standard TS for Westinghouse plants provided in NUREG–1431, ''Standard Technical Specifications Westinghouse Plants.''

The proposed action is in accordance with the licensee's application for amendments dated June 17, 1993, as supplemented by letter dated July 5, 1995.

The Need for the Proposed Action

The proposed action is needed so that the licensee can use higher fuel enrichment to provide additional flexibility in the licensee's reload design efforts and to provide flexibility in the reconstitution of fuel assemblies that are found to be leaking or are determined to be probable sources of future leakage.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would permit storage of fuel enriched to a nominal 5.0 weight percent Uranium-235. The safety considerations associated with storing new and spent fuel of a higher enrichment have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation were published and discussed in the staff assessment entitled, ''NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation,'' dated July 7, 1988, and published in the **Federal Register** (53 FR 30355) on August 11, 1988, as corrected on August 24, 1988 (53 FR 32322), in connection with Shearon Harris Nuclear Power Plant, Unit 1: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contributions of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendments.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to this action would be to deny the requested amendments. Such action would not reduce the environmental impacts of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the ''Final Environmental Statement Related to the Operation of Catawba Nuclear Station Units 1 and 2,'' dated January 1983.

Agencies and Persons Consulted

In accordance with its stated policy, on July 21, 1995, the NRC staff consulted with the South Carolina State official, Mr. V. Autrey of the Bureau of Radiological Health, Department of Health and Environmental Controls, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

For further details with respect to this action, see the licensee's letter dated June 17, 1993, as supplemented by letter dated July 5, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local

public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina.

Dated at Rockville, Maryland, this 21st day of August 1995.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–21285 Filed 8–25–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–293]

Boston Edison Company (Pilgrim Nuclear Power Station); Exemption

I

The Boston Edison Company (BECo/licensee) is the holder of Facility Operating License No. DPR–35, which authorizes operation of the Pilgrim Nuclear Power Station (the facility). The license provides, among other things, that the facilities are subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling-water reactor located at the licensee's site in Plymouth, Massachusetts.

II

The Code of Federal Regulations at 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' paragraph (a), in part, states that ''the licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.''

The Code of Federal Regulations at 10 CFR 73.55(d), ''Access Requirements,'' paragraph (1), specifies that, ''the licensee shall control all points of personnel and vehicle access into a protected area.'' The Code of Federal Regulations at 10 CFR 73.55(d)(5) also requires that, ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' It further states that individuals not employed by the licensee (e.g., contractors) may be authorized access to protected areas without escort provided that the individual, ''receives a picture badge upon entrance into a protected area which must be returned upon exit from the protected area. . . .''

The licensee proposes to implement an alternative unescorted access system which would eliminate the need to issue and retrieve picture badges at the entrance/exit location to the protected area and would allow all individuals, including contractors, to keep their picture badges in their possession when departing the Pilgrim site.

By letter dated June 21, 1995, the licensee requested an exemption from certain requirements of 10 CFR 73.55(d)(5). Specifically, the requested exemption would allow contractors who have unescorted access to retain possession of their picture badges instead of returning them as they exit the protected area.

III

Pursuant to 10 CFR 73.55, ''Specific exemptions,'' the Commission may upon application of any interested person or upon its own initiative, grant such exemption in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. The Code of Federal Regulations at 10 CFR 73.55 allows the Commission to authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have the same ''high assurance'' objective, that the proposed measures meet the general performance requirements of the regulation, and that the overall level of system performance provides protection against radiological sabotage equivalent to that which would be provided by the regulation.

Currently, unescorted access into the protected area for both employee and contractor personnel into the Pilgrim Nuclear Power Station is controlled through the use of picture badges. Positive identification of personnel which 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. In accordance with 10 CFR 73.55(d)(5), contractor personnel are not allowed to take their picture badges offsite. In addition, in accordance with the plant's physical security plan, the licensee's employees are also not allowed to take their picture badges offsite.

The proposed system will require that all individuals with authorized unescorted access 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 badge to gain access to the protected area, but must also have their hand geometry confirmed. All individuals, including contractors, who have authorized unescorted access into the protected area will be allowed to keep their picture badges in their possession when departing the Pilgrim site.

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. It should also be noted that the proposed system is only for individuals with authorized unescorted access and will not be used for those individuals requiring escorts.

Sandia National Laboratories conducted testing which demonstrated that the hand geometry equipment possesses strong performance characteristics. Details of the testing performed are in the Sandia report, ''A Performance Evaluation of Biometric Identification Devices,'' SAND91—0276 UC—906 Unlimited Release, June 1991. Based on the Sandia report and the licensee's experience using the current photo picture identification system, the false acceptance rate for the proposed hand geometry system would be at least equivalent to that of the current system. To assure that the proposed system will continue to meet the general performance requirements of 10 CFR 73.55(d)(5), the licensee will implement a process for testing the system. The site security plans will also 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 Pilgrim site.

IV

For the foregoing reasons, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet the same high assurance objective and the general performance requirements of 10 CFR 73.55. In addition, the staff has determined that the overall level of the proposed system's performance will provide protection against radiological sabotage equivalent to that which is provided by the current system in accordance with 10 CFR 73.55.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.55, this exemption is authorized by

law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the following exemption:

The requirement of 10 CFR 73.55(d)(5) that individuals who have been granted unescorted access and are not employed by the licensee are to return their picture badges upon exit from the protected area is no longer necessary. Thus, these individuals may keep their picture badges in their possession upon leaving the Pilgrim site.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (60 FR 42924).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of August 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–21286 Filed 8–25–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 040–02384]

Notice of Consideration of Amendment Request for Decommissioning the RMI Titanium Company Site in Ashtabula, Ohio, and Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

The U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Source Material License No. SMB–602, issued to RMI Titanium Company (the Licensee), for the decommissioning of its extrusion plant facilities in Ashtabula, Ohio.

The Licensee requested the amendment in a letter dated June 12, 1995, requesting that License No. SMB–602 be amended to incorporate the decommissioning plan (DP) for the RMI Titanium Company Extrusion Plant submitted to NRC, on April 27, 1995. The Licensee also submitted a site characterization report and an environmental report in support of the DP. The amendment would authorize the Licensee to decommission the extrusion plant facility in Ashtabula, Ohio, in accordance with the DP.

Radioactive contamination at the extrusion plant facility resulted primarily from extrusion operations, using depleted, normal, and slightly enriched uranium. Uranium extrusion operations occurred from 1962 through 1988.

The NRC will require the Licensee to remediate the extrusion plant site to meet NRC's criteria, and, during the decommissioning activities, to maintain effluents as low as reasonably achievable.

Prior to the issuance of the proposed amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

The NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR § 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, RMI Titanium Company, P.O. Box 579, Ashtabula, Ohio 44004–579, Attention: Mr. Eric Marsh, RMI Environmental Services, and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the application for amendment request is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 17th day of August, 1995.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–21268 Filed 8–25–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–327 and 50–328]

Sequoyah Nuclear Plant, Units 1 and 2; Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–77 and DPR–79, issued to the Tennessee Valley Authority (TVA or the licensee), for operation of the Sequoyah Nuclear Plant (SQN), Units 1 and 2 located in Soddy-Daisy, Tennessee.

The proposed amendments would change Technical Specification 3.7.5.c to allow an increase in the average essential raw cooling water supply header temperature from 84.5 °F to 87 °F until September 30, 1995.

Exigent circumstances arose due to significant increases in the average water temperature of the Tennessee River (Chickamauga Reservoir), which serves as the ultimate heat sink (UHS) for the Sequoyah Nuclear Plant (SQN) Units 1 and 2. This temperature, as measured at SQN's ERCW header, increased and on August 18, 1995, reached 83 °F. This high temperature is the result of daytime temperatures that remain above 90 °F. Continuing daytime high temperatures in the upper 90's are expected to cause the average ERCW temperature to increase at a rate of 0.5 °F per day. TS 3.7.5.c currently limits this temperature to less than or equal to

84.5 °F when the water level is above elevation 680 feet mean sea level.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence or the consequences of an accident are not increased as presently analyzed in the safety analysis since the objective of the event mitigation is not changed. No changes in event classification as discussed in Final Safety Analysis Report Chapter 15 will occur due to the increased river water temperature (with respect to both containment integrity and safety-system heat removal). Therefore, the probability of an accident or malfunction of equipment presently evaluated in the safety analyses will not be increased. The containment design pressure is not challenged by allowing an increase in the river water temperature above that allowed by the TSs, thereby ensuring that the potential for increasing offsite dose limits above those presently analyzed at the containment design pressure of 12 pounds per square inch is not a concern. Therefore, the variance to TS 3.7.5.c will not increase the consequences previously evaluated and reported for the containment analysis.

2. Create the possibility of a new or different kind of accident from ant previously analyzed.

The possibility of a new or different accident situation occurring as a result of this condition is not created. The essential raw cooling water (ERCW) system is not an initiator of any accident and only serves as a heat sink for normal and upset plant conditions. By allowing this change in operating temperatures, only the assumptions in the containment pressure analysis are changed. The variance in the ERCW temperature results in minimal increase in peak containment accident pressure. As for the net positive suction head requirements relative to the essential core cooling system and containment spray system, it has been demonstrated that this operational variance will not challenge the present design requirements. Therefore, the potential for creating a new or unanalyzed condition is not created.

3. Involve a significant reduction in a margin of safety.

The margin of safety as reported in the basis for the TSs is also not reduced. The design pressure for the containment and all supporting equipment and components for worse-case accident condition is 12.0 pounds per square inch guage (psig). This variance in river water temperature will not challenge the design condition of containment. Further, 12.0 psig design limit is not the failure point of containment, which would lead to the loss of containment integrity. Therefore, a significant reduction in the margin to safety is not created by this variance.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 12, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to

which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing.

The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mr. Frederick J. Hebdon: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, and to General Council, Tennessee Valley Authority, ET 11H, 400 West Summit Hill Drive, Knoxville, Tennessee, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 21, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee.

Dated at Rockville, Md., this 22nd day of August 1995.

For the Nuclear Regulatory Commission.

David E. LaBarge, Sr.,

Project Manager, Project Directorate II–3, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–21287 Filed 8–25–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36123; File No. SR–Amex–95–33]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to a One-Year Extension of the Pilot Program for Specialist Participation in the After-Hours Trading Facility in Portfolio Depositary Receipts and Investment Trust Securities Based on Stock Indexes

August 18, 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 31, 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 permanent approval of its pilot program for specialist participation in the after-hours trading facility in portfolio depositary receipts and investment trust securities based on stock indexes. In the alternative, the Exchange is proposing a one-year extension of the pilot program. The text of the proposed rule change is available at the Amex and at 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

On April 21, 1993, the Exchange submitted to the Commission, pursuant to section 19(b)(1) of the Act, and Rule 19b–4 thereunder, a proposed rule change concerning its After-Hours Trading (''AHT'') facility.[1] As originally filed, the proposed rule change requested permanent approval of Amex's pilot After-Hours Trading facility, and approval on a pilot basis for specialists in investment trust securities based on stock indexes to participate in the AHT facility. On January 4, 1994, the Amex amended the filing to request a three-month extension of the AHT pilot unitl April 30, 1994.[2] On February 1, 1994, the Commission approved the three-month extension without approving the portion of the proposed rule change that would allow specialists in investment trust securities to participate for their own accounts in the AHT facility.[3] On May 2, 1994, the Commission granted permanent approval to that portion of the rule proposal concerning the Amex's After-Hours Trading facility, not including the specialist participation request.[4]

On August 3, 1993, the Exchange amended the filing to request that specialists in Portfolio Depositary Receipts (''PDRs'') also be permitted to participate in the AHT facility.[5] On July 5, 1994, the Exchange amended the proposed rule change to eliminate the migration of limit orders for PDRs and investment trust securities from the specialist's limit order book to the AHT facility.[6]

The proposed rule change to permit specialist participation in the AHT facility in PDRs and investment trust securities was published for comment in Securities Exchange Act Release No. 34316 (July 5, 1994), 59 FR 35547 (July 12, 1994). No comments were received on the proposal. The proposed rule change was approved as a pilot program in Securities Exchange Act Release No. 34611 (Aug. 29, 1994), 59 FR 45739 (Sept. 2, 1994). The pilot is scheduled to expire on August 29, 1995.

The Exchange now seeks permanent approval for amendments to Rules 1300 (Applicability of 1300 Series) and 1302 (After-Hours Trading Orders) to permit specialists in PDRs and investment trust securities listed pursuant to Section 118B of the Exchange's Company guide[7] to participate in the AHT facility to ''clean-up'' order imbalances by entering an order for the specialist's account. For example, if there were single sided orders to buy 10,000 and sell 20,000 SPDRs immediately prior to the 5:00 p.m. close of the AHT facility, the specialist is permitted under the Exchange's pilot program to enter an order for its account to buy up to 10,000 SPDRs in order to eliminate the sell side order imbalance.

The Exchange also seeks permanent approval for amendments to Rule 1302(b) to eliminate the migration of limit orders for PDRs and investment trust securities from the specialist's limit order book to the AHT facility. (Amex Rule 1302(b) would provide, with respect to equity securities other than PDRs and investment trust securities, that a regular way good 'til canceled order that is designated as After-Hours eligible, that is on the specialist's limit order book, and that is executable at the closing price or better, shall migrate from the specialist's limit order book to the AHT program.)

The Exchange also seeks permanent approval for amendments to Rule 1302 to permit specialists in PDRs and investment trust securities to participate in a coupled closing price order so long as the other side of the order is not for an account in which a member or member organization has a direct or indirect interest.[8] For example, under the pilot program, the specialist in SPDRs is permitted to agree prior to the 4:15 close of the regular trading session for such securities to take the other side of a customer order to buy or sell SPDRs for execution in the AHT facility as a closing price coupled order. The Exchange believes that such capability tends to conform the trading of PDRs and investment trust securities to the practices of the ''basket'' market for equities where it is customary for a dealer to agree prior to the close of the regular trading session to take the contra side of a customer basket order at the closing index value.

The Exchange believes that permanent approval of the Exchange's pilot program that permits specialists in PDRs and investment trust securities to participate in the AHT facility in order to ''clean-up'' order imbalances and effect closing price coupled orders would benefit investors by providing additional liquidity to the listed cash market for derivative securities based upon well known market indexes. The market price of these securities is based upon transactions largely effected in markets other than the Amex. The Exchange states that the specialist in the Amex listed derivatives has no unique access to market sensitive information regarding the market for the underlying securities or closing index values. The Exchange, therefore, believes that specialist participation in the AHT facility in PDRs and investment trust securities in the manner described above does not raise any market integrity issues. In addition, should a customer not care for an execution at the closing price, the rules of the Exchange's AHT facility permit cancellation of an order up to the close of the AHT session at 5:00 p.m.[9] (Orders in the AHT facility are not executed until the 5:00 p.m. close of the After-Hours session.) A customer, therefore, has approximately 40 minutes to determine if an execution at the closing price suits its needs, and may cancel its order if it believes that the closing price does not suit its objectives.

As an alternative to permanent approval of the rule changes described above, the Exchange requests that the Commission extend the pilot for an additional one year term. Although the specialists on the Exchange made little or no use of the pilot program, the Exchange believes that the Commission should extend the pilot for an additional one year term because specialists have expressed interest in using the AHT for SPDRs and have indicated that the ability to participate in the AHT facility provides them with additional ability to meet customer demand that comes into the market late in the trading session.[10]

[1] File No. SR–Amex–93–15.

[2] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Sandra Sciole, Special Counsel, SEC, dated December 23, 1993.

[3] *See* Securities Exchange Act Release No. 33561 (Feb. 1, 1994), 59 FR 5789 (Feb. 8, 1994).

[4] *See* Securities Exchange Act Release No. 33993 (May 2, 1994), 59 FR 23902 (May 9, 1994).

[5] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Diana Luka-Hopson, SEC, dated August 3, 1993.

[6] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Sandra Sciole, Special Counsel, SEC, dated July 1, 1994.

[7] The Exchange currently lists two Portfolio Depositary Receipts, *viz*., Standard and Poor's Depositary Receipts on the S&P 500 and MidCap Indexes (''SPDRs''); and two investment trust securities pursuant to Section 118B of the Exchange's Listing Guidelines: LOR Index Trust SuperUnits and LOR Money Market SuperUnits.

[8] As amended, Amex Rule 1300(e)(i) defines, ''closing price'' as the price established by the last regular way sale on the Exchange prior to the official closing of the 9:30 a.m. to 4:15 p.m. trading session, as determined by the Exchange.

[9] *See* Amex Rule 1302(d).

[10] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Jennifer Choi, SEC, dated August 14, 1995.

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 prevent fraudulent manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received 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–95–33 and should be submitted by September 18, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

For the reasons set forth below, the Commission finds that approval of the Exchange's proposed rule change, for a temporary period ending on August 29, 1996, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) [11] and Section 11A [12] of the Act. The Commission believes that the proposed rule change is consistent with 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 a national market system, and, in general, further investor protection 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,[13] which allow exchanges to promulgate rules relating to specialists to maintain fair and orderly markets.

Under the pilot program, specialists in PDRs and investment trust securities listed pursuant to Section 118B of the Exchange's Listing Guidelines may participate in the AHT facility to clean up order imbalance by entering an order for their own account. The pilot program also allows specialists in PDRs and investment trust securities to participate in a coupled closing price order as long as the other side of the order is not for an account in which a member or member organization has a direct or indirect interest. Moreover, the pilot program eliminates the migration of limit orders for PDRs and investment securities from the specialist's limit order book to the AHT facility to prevent the potential for manipulation or misuse of specialists' information regarding which limit orders are eligible for execution in the AHT facility.

In the pilot approval order, the Commission believed that the rule change permitting specialists in PDRs and investment trust securities to participate in the AHT facility by entering an order for the specialist's account to eliminate order imbalances should assist specialists in their obligation to minimize temporary disparity between supply and demand.[14] Moreover, the Commission agreed with the Exchange that permitting specialists in PDRs and investment trust securities to participate in the AHT facility to ''clean-up'' order imbalances and effect closing price coupled orders would benefit investors by providing additional liquidity to the listed cash market for derivative securities based upon well known market indexes. The Commission also believed that the Amex's rule change strikes a reasonable balance between the Exchange's need to accommodate the needs of investors by increasing liquidity in the listed cash market for derivative securities based on market indexes and the need to prevent the potential for manipulation or misuses of information. Therefore, although Amex specialists will know which limit orders are eligible for execution in the AHT facility, they will not be able to use this information to their advantage because Rule 1302(b) is being amended to eliminate the migration of limit orders for PDRs and investment trust securities from the specialist's limit order book to the AHT facility.

The Commission initially approved the Amex rule change for a one-year pilot period to provide the Commission and the Exchange an opportunity to monitor the operation of the amendments to Rules 1300 and 1302. In this regard, the Commission requested that the Exchange submit a report and analysis regarding the operation of the pilot program. The Exchange, however, did not submit a report to the Commission because specialists on the Exchange made little or no use of the pilot program.

Therefore, the Commission believes that it would be appropriate to allow the Exchange to continue the pilot program for an additional one-year period to afford the Exchange and the Commission an opportunity to evaluate the operation of the pilot program and evaluate whether there are additional issues that need to be addressed. The Exchange should monitor the operation of the amendments to Rules 1300 and 1302 and assure the Commission that the specialists are properly executing their responsibilities.

The Commission, therefore, requests that the Exchange submit a report to the Commission by May 1, 1996, describing its experience with the pilot program. At a minimum, this report should contain the following information (broken down by month): (1) Trading volume (trades and number of shares of PDRs and investment trust securities) in the after-hours session; (2) the number of trades, if any, of (a) single-sided orders, and (b) coupled buy and sell orders which specialists executed in the after-hours session; (3) the number of shares, if any, of (a) single-sided orders, and (b) coupled buy and sell orders which specialists executed in the after-hours session; and (4) the number, if any, of single-sided orders that remained unexecuted at the end of the after-hours session. In addition, the Commission expects the Exchange to monitor closely the trading of PDRs and investment trust securities in the AHT facility to ensure that trading in these

[11] 15 U.S.C. 78(f) (1988 & Supp.V. 1993).

[12] 15 U.S.C. 78(k) (1988).

[13] 17 CFR 240.11b–1 (1994).

[14] *See* Securities Exchange Act Release No. 34611 (Aug. 29, 1994), 59 FR 45739 (Sept. 2, 1994).

issues is not subject to any patterns of manipulation or trading abuses or unusual trading activity. Finally, the Commission requests that the Amex keep the Commission apprised of any technical problems that may arise regarding the operation of the pilot program.

At the conclusion of the pilot period, if there continues to be no specialist activity or interest in the program, the Exchange should reevaluate whether this program should be continued. Any requests to modify this pilot program, to extend its effectiveness, or to seek permanent approval for the pilot program also should be submitted to the Commission by May 1, 1996, as a proposed rule change pursuant to Section 19(b) of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. This will permit the pilot program to continue on an uniterrupted basis. Moreover, the Exchange proposes to continue using the identical procedures contained in the pilot program as originally approved. In addition, the rule change that implemented the pilot program was published in the **Federal Register** for the full comment period, and no comments were received. Accordingly, the Commission believes that it is consistent with the Act to accelerate approval of the proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–Amex–95–33) is approved on a pilot basis until August 29, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–21229 Filed 8–25–95; 8:45 am]

BILLING CODE 8010–01–M

[15] 15 U.S.C. 78s(b)(2) (1988).

[16] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36121; International Series Release No. 840; File No. SR–CBOE–95–40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Warrants Based on the CBOE Germany 25 Index

August 18, 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 August 4, 1995, the Chicago Board Options Exchange (''CBOE'' 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 CBOE. 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 hereby proposes to list and trade warrants based on the CBOE Germany 25 Index (''Germany 25 Index'' or ''Index'') pursuant to CBOE Rule 31.5E (''Index Warrants''). The Exchange represents that the Index is broad-based. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at 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 Exchange 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 CBOE 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

The purpose of the proposed rule change is to permit the Exchange to list and trade warrants based on the Germany 25 Index. The Exchange represents that it is permitted to list and trade index warrants based on certain foreign broad-based stock indexes pursuant to CBOE Rule 31.5E.[3] The Exchange is now proposing to list and trade Index Warrants. According to the Exchange, the listing and trading of warrants on the Germany 25 Index will comply in all respects with CBOE Rule 31.5E.

Index Design[4]

The Germany 25 Index is a capitalization-weighted index consisting of 25 of the largest capitalized German equities traded on the Frankfurt Stock Exchange (''FSE''). The Exchange represents that Index Warrants will provide investors with the ability to gain investment exposure to one of the largest and most industrialized countries in Europe and to hedge existing investments in German securities.

The 25 stocks comprising the Germany 25 Index were selected by the CBOE for their high market capitalization and high degree of liquidity. According to the Exchange, the Index stocks are drawn from a broad base of industries and are representative of the industrial composition of the broader German equity market. Specifically, the Index components are the top 25 German stocks by market capitalization excluding: (1) Stocks with average daily volume less than 50,000 shares per day over the past six months; and (2) preferred stock of an issuer if that issuer also has publicly-traded common stock. The Index will be reviewed annually by the CBOE at the end of May in each year and any composition changes resulting from that review will be implemented after the June expiration in that year.

The Germany 25 Index is weighted by the capitalization (market value) of the component stocks. The capitalization of a particular stock in the Index is calculated by multiplying the listed shares (including common, preferred, and treasury shares) by the price of the stock.[5]

On June 30, 1995, the 25 stocks in the Index ranged in capitalization from DM 3.656 billion ($2.648 billion)[6] to DM 51.642 billion ($37.408 billion). The total capitalization of the stocks in the index on that date was DM 399.1 billion ($289.1 billion); the mean capitalization was DM 15.96 billion ($11.564 billion) and the median capitalization was DM 11.144 billion ($8.072 billion). The largest stock by capitalization (Allianz

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Currently, Rule 31.5E provides that: (1) Issuers of warrants must substantially exceed the Exchange's criteria for the listing of equity issues under CBOE Rule 31.5A and have assets in excess of $100 million; (2) particular warrant issues must have at least (i) one million warrants outstanding, (ii) a principal amount/aggregate market value of $4 million, and (iii) 400 public holders; and (3) warrant issues must have a term of one to five years from the date of issuance.

[4] *See* File No. SR–CBOE–95–39 (CBOE proposal to list options based on the Germany 25 Index).

[5] The Commission notes that this varies from the method used to calculate the values of domestic capitalization-weighted indexes, such as the S&P 100 Index. For such domestic indexes, values are determined based solely on the outstanding shares of common stock of each component in the indexes.

[6] The CBOE represents that dollar values used herein are based on a German mark/U.S. dollar exchange rate of 1.3805 marks per U.S. dollar prevailing on June 30, 1995.

AG Holdings) accounted for 12.94% of the total weighting of the Index, while the smallest (Kaufhof) accounted for 0.92%. The top 5 stocks accounted for 44.56% of the total weighting on that date.

For the period from January 1, 1995 through June 30, 1995, average daily volume in Germany 25 Index stocks ranged from a low of approximately 87,629 shares to a high of 2.53 million shares traded per day, with a mean daily trading volume for all the stocks in the Index during that period of 523,501 shares traded per day.

The Exchange represents that the Index is composed of ten (10) broad industry groupings, such as chemicals, automobile and insurance companies, among others, which reflect the industry composition of the German equity market.

Calculation

The CBOE states that the Germany 25 Index will reflect changes in the capitalization of the component stocks relative to the capitalization on a base date. The base date for the Index is June 30, 1995, at which time the Index was given a value of 200 by the CBOE. The Index value of 200 was reached by multiplying the price of each stock by the number of listed shares,[7] obtaining the sum of these values for all component stocks, and then dividing by a divisor determined to give the Index a value of 200. The CBOE states that the Germany 25 Index will be calculated by CBOE or its designee based on the most recent closing prices of the component stocks as reported by the FSE.

Maintenance

The Index will be maintained and calculated by the Exchange. To maintain continuity of the Index, the Exchange will adjust the Index to reflect certain events relating to the component stocks. For example, the Exchange will adjust the Index divisor to reflect cash dividends paid on the component securities. The Exchange will make this adjustment because German companies usually pay their dividends only once per year (generally in May or June). If not adjusted, the annual dividend payment would result in a significant drop in the Index value at the time when the dividends are paid. The divisor will be adjusted immediately prior to each ex-dividend date so that the Index level will not be affected by the dividend payment. A similar adjustment will be applied when a company issues new shares for which the shareholders have preemptive rights, or when other intra-year events, such as mergers and spinoffs, occur.

Index replacements, other than those described above, will only be made if a component must be removed from the Index because of a merger or takeover. In that case, the next eligible component will be added, *i.e.,* the German security with the highest market capitalization not then included in the Index that satisfies the criteria set forth above.

Index Warrant Trading

The proposed Index Warrants will be direct obligations of their issuer subject to cash-settlement in U.S. dollars, and either exercisable throughout their life (*i.e.,* American style) or exercisable only on their expiration date (if not exercisable prior to such date). The holder of an Index Warrant structured as a ''put'' would receive payment in U.S. dollars to the extent that the Index value has declined below a pre-stated cash settlement value. Conversely, holders of an Index Warrant structured as a ''call'' would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index value has increased above the pre-stated cash settlement value. If ''out-of-the-money'' at the time of expiration, the Index Warrants would expire worthless.

Currently,[8] the trading hours of the Exchange and the FSE do not overlap.[9] The Exchange, therefore will disseminate the value of the Index based on the most recent closing prices of the component stocks as reported by the FSE. After the close of the FSE, however, trading continues in the 25 stocks comprising the Index on the FSE's Integrated Stock Exchange Trading and Information System (''IBIS'').[10] The trading hours of IBIS and the Exchange currently overlap from the opening of trading at the CBOE until 10:00 a.m., Chicago time. During this period, the Exchange will calculate and disseminate an ''indicative'' Germany 25 Index level based on the most recent prices of the component stocks as reported by IBIS.[11] When trading on IBIS has concluded (10:00 a.m. Chicago time), the Exchange will disseminate the last ''indicative'' Index level. To avoid any confusion, the ''indicative'' Index level will have a different ticker symbol from the actual Index level.

Warrant Listing Standards and Customer Safeguards

The Exchange has established generic listing standards for index warrants which are contained in CBOE Rule 31.5E.[12] The Exchange also has established certain sales practice rules for the trading of index warrants which are contained in Chapter IX of the Exchange's Rules. The Exchange represents that the listing and trading of index warrants on the Germany 25 Index will be subject to these guidelines and rules.

The Exchange has submitted to the Commission a proposed rule change to amend its listing criteria for stock index warrants.[13] The Exchange represents that the Generic Warrant Listing Standards will be applicable to the listing and trading of currency and index warrants generally, including Germany 25 Index warrants. If the listing of Index Warrants is approved prior to Commission approval of the Generic Warrant Listing Standards, the CBOE represents that it will require that (1) these warrants be sold only to accounts approved for the trading of standardized options[14] and (2) index options margin will be applied.[15] Finally, prior to the commencement of trading, the Exchange will distribute a circular to its membership calling attention to certain compliance responsibilities when handling transactions in Index Warrants.[16]

Surveillance

The Exchange expects to apply its existing index warrant surveillance procedures to Index Warrants. In

[7] *See supra* note 5 and accompanying text.

[8] *See supra* note 4. Telephone conversation between Eileen Smith, Director, Product Development, Research Department, CBOE, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on August 17, 1995.

[9] The FSE's trading hours are from 10:30 a.m. to 1:30 p.m., Frankfurt time (3:30 a.m. to 6:30 a.m., Chicago time).

[10] According to the Exchange, the Deutsche Börse AG, the holding company for the FSE, states that IBIS is a screen-based trading and information system that is available for trading from 8:30 a.m. to 5:00 p.m., Frankfurt time (1:30 a.m. to 10:00 a.m., Chicago time). The CBOE represents that IBIS, as part of the FSE, is subject to the same rules and regulations as floor trading on the FSE. According to the Exchange, IBIS began operating in April, 1991.

[11] The Exchange intends to calculate the ''indicative'' Index with the same method of calculation as described above for the actual Index.

[12] *See supra* note 3.

[13] These proposed standards will govern all aspects of the listing and trading of index warrants, including, position and exercise limits, reportable positions, automatic exercise, settlement, margin, and notification of early exercise. *See* Securities Exchange Act Release No. 35178 (December 29, 1994), 60 FR 2409 (January 9, 1995) (notice of File No. SR–CBOE–94–34) (''Generic Warrant Listing Standards'').

[14] *See* CBOE Rule 9.7.

[15] Telephone conversation between Eileen Smith, Director, Product Development, Research Department, CBOE, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on August 17, 1995.

[16] *Id.*

addition, the CBOE states that the German legislature recently adopted new laws regarding insider trading that also provide for the creation of an independent regulatory authority.[17] The Exchange understands that these developments will facilitate the effective coordination between the Commission and the appropriate German regulatory authorities of warrant trading on the Germany 25 Index because they will enhance the surveillance of trading in the stocks comprising the Index.[18] In addition, the Exchange will continue to pursue its own independent surveillance sharing agreement with the Deutsche Börse AG (the holding company that owns the FSE) and/or the FSE.[19]

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that it is designed to permit trading in warrants based on the Germany 25 Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

(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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer 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 Exchange consents, the Commission will:

(a) By order approve such 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, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–40 and should be submitted by September 18, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–21271 Filed 8–25–95; 8:45 am]

BILLING CODE 8010–01–M

[17] The Commission notes that this new regulatory body, the Bundesaufsichtsamt fur den Wertpapierhandel, was established in January 1995.

[18] Telephone conversation between Eileen Smith, Director, Product Development, Research Department, CBOE, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on August 8, 1995.

[19] *Id.*

[20] 15 U.S.C. 78f(b)(5) (1988).

[21] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36124; File No. SR–CBOE–95–42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Add Two Position and Exercise Limit Tiers for Qualifying Equity Option Classes and To Expand the Equity Option Hedge Exemption

August 18, 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 August 7, 1995, the Chicago Board Options Exchange (''CBOE'' 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 CBOE. 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 CBOE proposes to amend Rule 4.11 (Position Limits) and Rule 4.12 (Exercise Limits) for equity options to add two upper position and exercise limit tiers for those equity option classes that meet certain criteria for high liquidity in the underlying stocks. In addition, CBOE proposes to expand the current equity option hedge exemption from twice to three times the standard or base position limit. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at 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 Exchange 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 CBOE 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

In 1994, the CBOE and the American Stock Exchange initiated discussions with Commission staff on the effect of increasing the number of position and exercise limit[3] tiers for equity options

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1994).

[3] Position limits impose a ceiling on the aggregate number of option contracts on the same side of the market that an investor, or investors acting in concert, can hold or write. Similarly, exercise limits impose a ceiling on the aggregate long positions in option contracts that an investor, or investors acting in concert, can or will have exercised within five consecutive business days.

The equity option position limits provided in Exchange Rule 4.11 are set at 4,500 or 7,500 or 10,500 contracts, and were increased to these levels in December 1993. Inadvertently, according to the Exchange, the corresponding exercise limits in Exchange Rule 4.12 were not increased at the same time from the Previous 3,000 or 5,500 or 8,000 contract levels. The CBOE has proposed to increase the exercise limits accordingly, and to make other amendments to the equity option position and exercise limit rules. *See* Securities Exchange Act Release No. 35759 (May 24, 1995), 60 FR 28432

from three to five, in response to feedback from customers and member firms that existing position and exercise limits for certain classes were too low. The discussions also included whether investors, particularly investors with sizeable assets or accounts, could benefit from an expansion of the equity hedge exemption contained in Rule 4.11, Interpretation and Policy .04, from a maximum allowable position of twice the standard or base limit to three times the limit.[4] As set forth in greater detail in a recent report prepared by the Exchange (''Study''),[5] the CBOE determined that position and exercise limit tiers can be added and that the equity hedge exemption can be expanded to benefit investors without increasing the potential for market disruption.

The CBOE is proposing to add two tiers above the current position and exercise limit tiers for equity options provided in Exchange Rules 4.11 and 4.12, at 20,000 and 25,000 contract levels.[6] The criterion to qualify for the proposed 20,000 contract limit will be that the underlying security must have at least 240 million shares outstanding with 60 million shares traded in the past six months, or have 80 million shares traded in the past six months. To qualify for the proposed 25,000 contract limit, the underlying security must have at least 300 million shares outstanding with 75 million shares traded in the past six months, or 100 million shares traded in the past six months.

According to the Exchange, the number of equity option classes currently listed at the CBOE that would qualify for one of these higher position and exercise tiers is small. The Exchange represents that based on available statistics as of June 30, 1995, approximately 73 classes would meet the above shares outstanding and six month trading volume criteria for the 25,000 contract tier, and approximately 22 classes would qualify for the 20,000 contract tier, out of approximately 580 equity option classes currently listed on the CBOE.

In preparing the Study, the CBOE compiled information relating to the market impact of increased position and exercise limits for equity options, and addressed among other things: (1) The maximum underlying dollar value of an at-limit (hedged) position; (2) the percentage of shares outstanding that could be controlled under the proposed, expanded limits (unhedged position); (3) how contract volume compares between institutional and retail customers in those classes eligible for the new tiers; (4) position limit violation and exemption history for the existing three tiers; and (5) other evidence supporting an expansion of the current position limit tiers.

The CBOE believes that the findings set forth in the Study should alleviate concerns that the new position limit tiers and expanded equity hedge exemption may increase exposure to market disruption.[7] These findings are summarized below. For a fully hedged position utilizing the expanded equity hedge exemption, although the maximum underlying dollar value of an at-limit position under the increased limits will obviously be greater than under the increased limits will obviously be greater than under the current limits, the largest dollar value controlled in any equity option class would not exceed 2.06% of the total market capitalization of the underlying equity. The CBOE noted in the Study that the actual underlying dollar value controlled will be less than that implied by the calculation because the at-limit position is at least two-thirds hedged with the underlying security.

Further, for an unhedged position under the limits proposed in the Study, the maximum percentage that could be controlled by any one investor or group of investors acting in concert would not exceed 7.2% of outstanding shares in any eligible equity option class, in comparison to a maximum of 10.92% of outstanding shares that currently can be controlled in an option class in the 10,500 contract tier. With respect to current classes in which the percentage of shares controlled exceeds 5%, the CBOE represents that to date there have been no position or exercise limit violations.

The CBOE states that the Study also elucidated a need for expanded position and exercise limits. First, the Exchange represents that the majority of both institutional and retail customer volume is equity options traded on the Exchange is transacted in equity option classes qualifying for one of the expanded tiers. Second, for calendar year 1994, the CBOE notes that all but one of approximately 80 position limit violations occurred in equity option classes qualifying for the 10,500 contract tier, and that all but seven of approximately 340 market-maker exemptions granted were also for equity option classes in the 10,500 contract tier. Third, as noted in the Study, the CBOE received letters and comments affirming the need to increase the current position limits.[8]

In addition to the proposed 25,000 and 20,000 contract tiers, the CBOE is also proposing to expand the equity hedge exemption provided in Exchange Rule 4.11, Interpretation and Policy .04, so that the maximum allowable position, after exempting from the base position limit specified positions where the option contract is hedged by 100 shares of stock or securities convertible into stock, will be three times instead of twice the standard or base limit currently provided. For example, the maximum position allowed in a single equity option class in the proposed 25,000 contract tier will be 75,000 contracts, of which 50,000 contracts must be hedged. The CBOE believes that its data supports this proposal. The proposed increase in the maximum hedge exemption will apply to all position limit tiers, not just the proposed 25,000 and 20,000 contract tiers. The CBOE notes that in the Study, approximately 30 to 35 customer accounts and 25 market-maker/member

(May 31, 1995) (notice of File No. SR–CBOE–95–22).

[4] The equity hedge exemption exempts certain specified equity options positions from the stated (or base) position limits in Exchange Rule 4.11 where the option contracts are hedged by 100 shares of stock or securities convertible into such stock (or hedged by the same number of shares represented by an adjusted option contract), up to a maximum allowable position of twice the standard or base limit.

[5] The purpose of the Study was to analyze the market impact of increased limits and an expanded hedge exemption. *See* Letter from Mary Bender, Senior Vice President, Division of Regulatory Services, CBOE, to Holly Smith, Associate Director, Office of Market Supervision, Division of Market Regulation, Commission, dated April 28, 1995.

[6] As stated previously, the current position limits in Rule 4.11 are 4,500, 7,500, and 10,500 contracts with the position limits for any particular class of options determined as follows: (1) to be eligible for the 10,500 contract limit, either the most recent six-month trading volume of the underlying security must have totalled at least 40 million shares, or the most recent six-month trading volume of the underlying security must have totalled at least 30 million shares and the underlying security must have at least 120 mullion shares outstanding; (2) to be eligible for the 7,500 contract limit, either the most recent six-month trading volume of the underlying security must have totalled at least 20 million shares, or the most recent six-month trading volume of the underlying security must have totalled at least 15 million shares and the underlying security must have at least 40 mullion shares outstanding; and (3) to be eligible for the 4,500 contract limit, the underlying security must not satisfy the criteria for a higher limit. *See* CBOE Rule 4.11, Interpretation and Policy .02.

[7] The CBOE notes that the Study examined data that is based on contract limits well in excess of the limits actually proposed by CBOE herein (*i.e.*, proposed tiers of 40,000 and 20,000 contracts). Accordingly, the Exchange believes that an added measure of comfort can be drawn from the fact that if no material market disruption likelihood could be detected at the higher limits used in the Study, the same should remain true, and the potential for market disruption should be less likely, at the proposed 20,000 and 25,000 contract limits.

[8] *See infra* note 11.

firm accounts, representing approximately 35 equity option classes, used the equity hedge exemption on a consistent basis in 1994. Moreover, the Study indicated that many institutions had significant positions both in equity options qualifying for the expanded tiers and in the underlying securities. As noted below, the CBOE also received comments in support of expanding the equity hedge exemption.[9]

For the above reasons, the CBOE is requesting approval of the proposed 20,000 and 25,000 position and exercise limit tiers for qualifying equity option classes and an expansion of the current equity option hedge exemption from two to three times the base position limit. The CBOE strongly believes that the investing community—institutions, retail customers and member firms across the board—will benefit from the proposed increases in equity option position limits and the equity option hedge exemption, particularly investors with sizeable holdings, accounts, or assets who employ equity options to hedge large stock holdings, and who have found the existing equity option position limit tiers and hedge exemption to be too restrictive. The CBOE does not believe, based on existing data, that the increased position limits and equity hedge exemption proposed herein will increase the risk of or exposure to market disruption resulting from the higher numbers of equity option contracts permitted to be under common control.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by providing investors with enhanced hedging capabilities.

(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

The CBOE states that it received six letters from member firms nothing that the current position limits are too low and supporting an increase in the current position limit levels, particularly for institutional clients.[11] The CBOE states that it has also received comments from member firm representatives and customers that, with respect to sizeable portfolios or assets, they do not have adequate hedging capabilities under the current position limit tiers for equity options. Further, the CBOE represents that money managers have commented that the current equity option position limits are too restrictive with respect to the size of assets managed.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer 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 Exchange consents, the Commission will:

(a) By order approve such 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, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–42 and should be submitted by September 18, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[9] *Id.*

[10] 15 U.S.C. 78f(b)(5) (1988).

[11] *See* Letter to Karen Charleston, CBOE, from Alfred Scerbo, Compliance Department, Bear, Stearns & Co., Inc., dated October 6, 1994; letter to Patricia Cerny, CBOE, from Heather Wood, Branch Manager, Prudential Securities, dated January 18, 1995; letter to Patricia Cerny, CBOE, from William McGowan, Senior Vice President, Mesirow Financial, dated December 20, 1994; letter to Karen Charleston, CBOE, from Scott Kilrea, LETCO, dated October 3, 1994; letter to Patricia Cerny, CBOE, from Lyn Lane, Vice President, Rauscher Pierce Refsnes, Inc., dated December 8, 1994; and letter to Patricia Cerny, CBOE, from W. Thomas Clark, Managing Director, Morgan Stanley, dated January 11, 1995.

[12] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36125; International Series Release No. 841 File No. SR–CBOE–95–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Options and Long-Term Options on the CBOE Germany 25 Index and Long-Term Options on a Reduced-Value CBOE Germany 25 Index

August 18, 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 August 4, 1995, the Chicago Board Options Exchange (''CBOE'' 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 CBOE. 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 hereby proposes to amend certain of its rules to provide for the listing and trading on the Exchange of options on the CBOE Germany 25 Index (''Germany 25 Index'' or ''Index''). The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at 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 Exchange 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

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

CBOE 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

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style [3] stock index options on the Germany 25 Index. The Index is a capitalization-weighted index of 25 German blue-chip equities listed on the Frankfurt Stock Exchange (''FSE''). The Exchange represents that options on the Index will provide investors with a low-cost means of participating in the German economy and hedging against the risk of investing in that economy.

Index Design

The 25 stocks comprising the Germany 25 Index were selected by the CBOE for their high market capitalization and high degree of liquidity. According to the Exchange, the Index stocks are drawn from a broad base of industries and are representative of the industrial composition of the broader German equity market. Specifically, the Index components are the top 25 German stocks by market capitalization excluding: (1) Stocks with average daily volume less than 50,000 shares per day over the past six months; and (2) preferred stock of an issuer if that issuer also has publicly-traded common stock. The Index will be reviewed annually by the CBOE at the end of May in each year and any composition changes resulting from that review will be implemented after the June expiration in that year.

The Germany 25 Index is weighted by the capitalization (market vlaue) of the component stocks. The capitalization of a particular stock in the Index is calculated by multiplying the listed shares (including common, preferred, and treasury shares) by the price of the stock.[4]

On June 30, 1995, the 25 stocks in the Index ranged in capitalization from DM 3.656 billion ($2.648 billion) [5] to DM 51.642 billion ($37.408 billion). The total capitalization of the stocks in the index on that date was DM 399.1 billion ($289.1 billion); the mean capitalization was DM 15.96 billion ($11.564 billion) and the median capitalization was DM 11.144 billion ($8.072) billion). The largest stock by capitalization (Allianz AG Holdings) accounted for 12.94% of the total weighting of the Index, while the smallest (Kaufhof) accounted for 0.92%. The top 5 stocks accounted for 44.56% of the total weighting on that date.

For the period from January 1, 1995 through June 30, 1995, average daily volume in Germany 25 Index stocks ranged from a low of approximately 87,629 shares to a high of 2.53 million shares traded per day, with a mean daily trading volume for all the stocks in the Index during that period of 523,501 shares traded per day.

The Exchange represents that the Index is composed of ten (10) broad industry groupings, such as chemicals, automobile and insurance companies, among others, which reflect the industry composition of the German equity market.

Calculation

The CBOE states that the Germany 25 Index will reflect changes in the capitalization of the component stocks relative to the capitalization on a base date. The base date for the Index is June 30, 1995, at which time the Index was given a value of 200 by the CBOE. The Index value of 200 was reached by multiplying the price of each stock by the number of listed shares,[6] obtaining the sum of these values for all component stocks, and then dividing by a divisor determined to give the Index a value of 200. The CBOE states that the German 25 Index will be calculated by CBOE or its designee based on the most recent closing prices of the component stocks as reported by the FSE.

Maintenance

The Index will be maintained and calculated by the Exchange. To maintain continuity of the Index, the Exchange will adjust the Index to reflect certain events relating to the component stocks. For example, the Exchange will adjust the Index divisor to reflect cash dividends paid on the component securities. The Exchange will make this adjustment because German companies usually pay their dividends only once per year (generally in May or June). If not adjusted, the annual dividend payment would result in a significant drop in the Index value at the time when the dividends are paid. The divisor will be adjusted immediately prior to each ex-dividend date so that the Index level will not be affected by the dividend payment. A similar adjustment will be applied when a company issues new shares for which the shareholders have preemptive rights, or when other intra-year events, such as mergers and spinoffs, occur.

Index replacements, other than those described above, will only be made if a component must be removed from the Index because of a merger or takeover. In that case, the next eligible component will be added, *i.e.,* the German security with the highest market capitalization not then included in the Index that satisfies the criteria set forth above.

Index Option Trading

In addition to regular Index options, the Exchange may provide for the listing of long-term index option series (''LEAPS'') and reduced-value LEAPS on the Index (''Index LEAPS'').

For reduced-value Index LEAPS, the underlying value will be computed at one-tenth of the Index level. The current and closing index value of any such reduced-value Index LEAPs will, after such initial computation, be rounded to the nearest one-hundredth.

The trading hours for options on the Index will be from 8 a.m. to 3:15 p.m., Chicago time. Currently, the trading hours of the Exchange and the FSE do not overlap.[7] The Exchange, therefore, will disseminate the value of the Index based on the most recent closing prices of the component stocks as reported by the FSE. After the close of the FSE, however, trading continues in the 25 stocks comprising the Index on the FSE's Integrated Stock Exchange Trading and Information System (''IBIS'').[8] The trading hours of IBIS and the Exchange currently overlap for the two hours period between 8:00 a.m. and 10:00 a.m., Chicago time. During this two hour period, the Exchange will calculate and disseminate an ''indicative'' Germany 25 Index level based on the most recent prices of the component stocks as reported by IBIS.[9]

[3] Europen-style options may only be exercised during a specified period before the options expire.

[4] The Commission notes that this varies from the method used to calculate the values of domestic capitalization-weighted indexes, such as the S&P 100 Index. For such domestic indexes, values are determined based solely on the outstanding shares of common stock of each component in the indexes.

[5] The CBO represents that dollar values used herein are based on a German mark/U.S. dollar exchange rate of 1.3805 marks per U.S. dollar prevailing on June 30, 1995.

[6] *See supra* note 4 and accompanying text.

[7] The FSE's trading hours are from 10:30 a.m. to 1:30 p.m., Frankfurt time (3:30 a.m. to 6:30 a.m., Chicago time).

[8] According to the Exchange, the Deutsche Börse AG, the holding company for the FSE, states that IBIS is a screenbased trading and information system that is available for trading from 8:30 a.m. to 5:00 p.m., Frankfurt time (1:30 a.m. to 10:00 a.m., Chicago time). The CBOE represents that IBIS, as part of the FSE, is subject to the same rules and regulations as floor trading on the FSE. According to the Exchange, IBIS began operating in April, 1991.

[9] The Exchange intends to calculate the ''indicative'' Index with the same method of calculation as described above for the actual Index.

When trading on IBIS has concluded (10:00 a.m. Chicago time), the Exchange will disseminate the last ''indicative'' Index level. To avoid any confusion, the ''indicative'' Index level will have a different ticker symbol from the actual Index level.

The option premium values will be quoted in U.S. dollars and, therefore, trading accounts will be denominated in U.S. dollars. For strike prices under $200, the Exchange reserves the right to list series in 2½ point intervals.

Surveillance

The Exchange expects to apply its existing index options surveillance procedures to Index options. In addition, the CBOE states that the German legislature recently adopted new laws regarding insider trading that also provide for the creation of an independent regulatory authority.[10] The Exchange understands that these developments will facilitate the effective coordination between the Commission and the appropriate German regulatory authority of option trading on the Germany 25 Index because they will enhance the surveillance of trading in the stocks comprising the Index. In addition, the Exchange will continue to pursue its own independent agreement with the Deutsche Börse AG (the holding company that owns the FSE) and/or the FSE.[11]

Exercise and Settlement

The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 3:15 p.m. (Chicago time) on the immediately preceding Thursday, unless a holiday occurs. The exercise settlement value of the Index at option expiration will be calculated by the Exchange on the day following the last day of trading in the expiring contracts. The exercise settlement value of Index options at expiration will be determined at the close of the regular Friday trading sessions at the FSE in Germany, ordinarily at 1:30 p.m., Frankfurt time (6:30 a.m., Chicago time), *i.e.*, values of component stocks disseminated through IBIS will not be used in calculating the settlement values for Index options or Index LEAPS.[12] If an Index stock does not open for trading at the FSE, the last available price on the FSE of the stock will be used in the calculation of the value of the Index. When expirations are moved in accordance with Exchange holidays, such as when the CBOE is closed on the Friday before expiration, the last trading day for expiring options will be Wednesday and the exercise settlement value of Index options at expiration will be determined at the close of the regular Thursday trading sessions at the FSE in Germany even if the FSE is open on Friday. If the FSE will be closed on the Friday before expiration but the CBOE will not, the last trading day for expiring Index options and Index LEAPS will be Wednesday.[13]

Position Limits

The Exchange proposes to establish position limits for options on the Index of 50,000 contracts on either side of the market, with no more than 30,000 contracts in the series with the nearest expiration month. The Exchange represents that these limits are roughly equivalent, in dollar terms, to the limits applicable to options on other approved broad-based indexes.

Exchange Rules Applicable

Except as modified herein, the rules in Chapter XXIV of the CBOE's rules will be applicable to Germany 25 Index options, including Index LEAPS.

The Exchange states that it has the necessary systems capacity to support new series that would result from the introduction of Germany 25 Index options. The CBOE also states that it has been informed that the Options Price Reporting Authority (''OPRA'') has the capacity to support such new series.[14]

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to permit trading in options based on the Germany 25 Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in options based on an additional index.

(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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer 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 Exchange consents, the Commission will:

(a) By order approve such 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, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–39 and should be submitted by September 18, 1995.

[10] The Commission notes that this new regulatory body, the Bundesaufsichtsamt fur den Wertpapierhandel, was established in January 1995.

[11] Telephone conversation between Eileen Smith, Director, Product Development, Research Department, CBOE, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on August 8, 1995.

[12] *Id.*

[13] In this circumstance, the CBOE will issue a notice to members informing them that the last trading day for Index options and Index LEAPS will be on Wednesday even though the CBOE will be open on expiration Friday. *Id.*

[14] *See* Letter from Joe Corrigan, Executive Director, OPRA, to Eileen Smith, Director, Product Development, Research Department, CBOE, dated November 21, 1994.

[15] 15 U.S.C. 78f(b)(5) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–21273 Filed 8–25–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36128; International Series Release No. 843; File No. SR–CBOE–95–41]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to Warrants on the Japanese Export Stock Index

August 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 August 7, 1995, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 Exchange. 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 list and trade warrants on the Japanese Export Stock Index (''Japan Export Index'' or ''Index''). The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at 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 Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (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

The Exchange represents that it is permitted to list and trade index warrants under CBOE Rule 31.5(E). The Exchange is now proposing to list and trade index warrants based upon the Japan Export Index. The Exchange further represents that the listing and trading of Index warrants will comply in all respects with CBOE Rule 31.5(E), as discussed below.

Index Design

The Japan Export Index is an ''equal dollar weighted'' broad-based index comprised of the stocks of 40 of the largest Japanese export companies, as measured by total yen-denominated export revenue, listed on the Tokyo Stock Exchange (''TSE'').[3] At the outset each of the component securities comprising the Index will be equally represented. Thus, on the day warrants on the Index are priced for sale to the investing public, each component security will represent 2.5% of the original Index value.

The Japan Export Index stocks are drawn from a broad base of industries and are representative of the industrial composition of the broader Japanese equity market. Business sector representation in the Index as of June 30, 1995, was as follows: (1) Autos and auto parts (25%) (10 Issues); (2) Electric Machinery—diversified (22.5%) (9 issues); (3) Consumer Electronics (20%) (8 issues); (4) Iron and Steel (7.50%) (3 issues); (5) Precision instruments (7.5%) (3 issues); (6) Shipbuilding (5%) (2 issues); (7) Chemicals (5%) (2 issues); (8) Machinery (2.5%) (1 issue); (9) Computers and semiconductors (2.5%) (1 issue); and (10) Services (2.5%) (1 issue).

As of June 30, 1995, the CBOE represents that the 40 stocks contained in the Index range in market capitalization from $1.59 billion to $74.76 billion. The median capitalization of the component securities in the Index was $7.6 billion. Total market capitalization for the Index was approximately $451 billion.[4]

Calculation

The Index will be calculated by determining a multiplier such that each security will represent an equal percentage (2.5%) of the Index on the date the warrants are priced for initial sale to the public. The Index value for any day will equal the sum of the products of the most recently available market prices and the applicable multipliers for the component securities. The Index value will be set equal to 100 on the date the warrants are priced for initial offering to the public. In the event that a security does not trade on a given day, the previous day's last sale price is used for purposes of calculating the Index. In the event that a given security has not traded for more than one day, then the last sale price on the last day on which the security was traded will be used.

Maintenance

The Index will be calculated by the Exchange based on closing prices on the TSE each day and will be disseminated before the opening of trading via Options Price Reporting Authority. The Index will be rebalanced on the last trading day of the year such that the components again represent an equal percentage (2.5%) of the Index. The components of the Index will remain unchanged unless it becomes necessary to remove a component security due to a merger, takeover, or some other event where the issuer of the component security is not the surviving entity. If a component security is removed, another security will be added to preserve the character of the Index. To ensure continuity in the Index's value, the index divisor will be adjusted to reflect, among other things, certain rights issuances, stock splits, rebalancing, and component security changes.

Index Warrant Trading

The proposed warrants will be direct obligations of their issuer subject to cash-settlement in U.S. dollars, and either exercisable throughout their life (i.e., American-style) or exercisable only immediately prior to their expiration date (i.e., European-style). Upon exercise, the holder of a warrant structured as a ''put'' would receive payment in U.S. dollars to the extent that the index value has declined below a pre-stated cash settlement value. Conversely, upon exercise, the holder of a warrant structured as a ''call'' would

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[16] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The components of the Index are as follows: Aiwa; Bridgestone Corp.; Canon; Casio Computer; Citizen Watch. Fuji Heavy Inds.; Fuji Photo Film; Hitachi, Honda Motor; Isuzu Motor; Kawasaki Heavy Ind.; Kawasaki Steel; Komatsu Ltd.; Konica Corp.; Kyocera Corp.; Kyushu Matsushita; Matsu-Kotob Eltr.; Matsushita Elect I; Mazda Motor; Mitsubishi Heavy; Mitsubishi Motors; NEC; Nikon Corp.; Nintento; Nippon Steel; Nissan Motor; OKI Electric Ind.; Pioneer Eltr.; Ricoh Co. Ltd.; Sanyo Electric; Sega Enterprises; Sharp Corp.; Sony; Sumitomo Mtl. Ind.; Suzuki Motor; TDK Corportion; Toshiba; Toyota Motor; Victor Co. of Japan; and Yamaha Motor.

[4] Based on the exchange rate of 85 yen/US$ 1 prevailing on June 30, 1995.

receive payment in U.S. dollars to the extent that the index value has increased above the prestated cash settlement value. Warrants that are ''out-of-the-money'' at the time of expiration will expire worthless.

Warrant Listing Standards and Customer Safeguards

The Exchange has established listing standards for index warrants which are contained in CBOE Rule 31.5E.[5] The Exchange also has established certain sales practice rules for the trading of index warrants which are contained in Chapter IX of the Exchange's Rules. The Exchange represents that the listing and trading of index warrants on the Japan Export Index will be subject to these guidelines and rules.

The Exchange has submitted to the Commission a proposed rule change to amend its listing criteria for stock index warrants.[6] The Exchange represents that the Generic Warrant Listing Standards will be applicable to the listing and trading of currency and index warrants generally, including Japan Export Index warrants. If the listing of Japan Export Index warrants is approved prior to Commission approval of the Generic Warrant Listing Standards, the CBOE represents that it will require that (1) these warrants be sold only to accounts approved for the trading of standardized options[7] and (2) index options margin will be applied.[8] Finally, prior to the commencement of trading, the Exchange will distribute a circular to its membership calling attention to certain compliance responsibilities when handling transactions in the Japan Export Index warrants.[9]

Surveillance

The Exchange expects to apply its existing index warrant surveillance procedures to Japan Export Index warrants. The Exchange has a market surveillance agreement with the Tokyo Stock Exchange (''TSE'') which was obtained in connection with CBOE trading of options of the Nikkei 300 Index (''Nikkei 300''). Approximately 73% of the stocks in the Index are also components of the Nikkei 300 Index. The Exchange notes that the TSE is under the regulatory oversight of the Ministry of Finance (''MOF'') and believes that the ongoing oversight of all securities trading activity on the TSE by the MOF will help to ensure that trading of the component securities included in the Japan Export Index will be appropriately monitored. Finally, the Exchange is aware of a Memorandum of Understanding (''MOU'') between the Commission and the MOF that provides a framework for mutual assistance in investigatory and regulatory matters.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular, in that it is designed to facilitate transactions in securities and to remove impediments to and perfect the mechanism of a free and open market and facilitate transactions in securities because the Index warrants will provide investors a means by which to hedge existing investments in the Japanese equity market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer 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 such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR–CBOE–95–41 and should be submitted by September 18, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–21228 Filed 8–25–95; 8:45 am]

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[Release No. 34–36122; File No. SR–Phlx–95–54]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Extending the Pilot Program for Equity and Index Option Specialist Enhanced Parity Split Participations

August 18, 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 August 3, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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

[5] Currently, Rule 31.5E provides that: (1) Issues of warrants must substantially exceed the Exchange's criteria for the listing of equity issues under CBOE Rule 31.5A and have assets in excess of $100 million; (2) particular warrant issues must have at least (i) one million warrants outstanding, (ii) a principal amount/aggregate market value of $4 million, and (iii) 400 public holders; and (3) warrant issues must have a term of one to five years from the date of issuance.

[6] These proposed standards will govern all aspects of the listing and trading of index warrants, including, position and exercise limits, reportable positions, automatic exercise, settlement, margin, and notification of early exercise. *See* Securities Exchange Act Release No. 35178 (December 29, 1994), 60 FR 2409 (January 9, 1995) (notice of File No. SR–CBOE–94–34) (''Generic Warrant Listing Standards'').

[7] *See* CBOE Rule 9.7.

[8] Telephone conversation between Eileen Smith, Director, Product Development, Research Department, CBOE, and John Ayanian, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Market Regulation''), Commission, on August 17, 1995.

[9] *Id.*

[10] 17 CFR 200.30–3(a)(12).

by the Exchange. 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 Phlx proposes to extend until August 26, 1996, the Exchange's enhanced parity participation (''Enhanced Parity Split'') pilot program for Equity and index option specialists (''Pilot Program''). Amendments to the wording in Exchange Rule 1014(g)(ii) and Options Floor Procedure Advice B–6 (Priority of Option Orders for Equity Options and Index Options by Account Type) (''Advice B–6'') are also being made to correct certain language pertaining to the Enhanced Parity Split and to note the change in the expiration date of the Pilot Program. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at 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 Phlx included statements concerning the purpose of and basis for the proposed rule change. The Text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (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

In August 1994, the Commission approved, as a one-year pilot program, which expires on August 26, 1995, the Exchange's proposal to adopt an enhanced specialist participation in parity equity option trades.[1] In November 1994, the Commission approved the Exchange's request to expand the Enhanced Parity Split to include index option specialists as well as equity option specialists.[2] The Enhanced Parity Split was again amended in March 1995, to modify the Pilot Program where less than three controlled accounts[3] are on parity with the specialist.[4] The Enhanced Parity Split is only applicable to 50% of each specialist units's issues listed prior to August 26, 1994, and to all option classes listed after that date.[5]

The Enhanced Parity Split, as amended, applies in those situations where an equity or index options specialist is on parity with one or more controlled accounts for orders involving more than five contracts. Specifically: when an equity or index option specialist is on parity with one controlled account, the specialist receives 60% of the contracts and the controlled account receives the remaining 40%; when a specialist is on parity with two controlled accounts, the specialist receives 40% of the contracts and each controlled account receives 30%; and when a specialist is on parity with three or more controlled accounts, the specialist is counted as two crowd participants for purposes of allocating the contracts. In all of these situations, if a customer is on parity, the customer will not be disadvantaged by receiving a lesser allotment than any other crowd participant, including the specialist.

Although the Enhanced Parity Split was approved in August 1994, the Exchange did not actually implement the program until late October 1994, due to logistical issues regarding the specialists' lists of options classes that would be subject to the Enhanced Parity Split and how to divide the contracts where there was an odd number of contracts involved. The Exchange therefore represents that it has only had the opportunity to conduct two quarterly reviews of the Enhanced Parity Split pursuant to Exchange Rule 509 to ensure that specialists receiving the Enhanced Parity Split are complying with the Exchange's minimum performance standards.[6] Thus, because the Enhanced Parity Split has not been in operation for a full year and because the Exchange's Quality of Markets Subcommittee has not had the opportunity, in the Phlx's opinion, to properly judge the effectiveness of the Pilot Program, the Exchange has determined to extend the program for an additional year. Accordingly, the Phlx requests that the Enhanced Parity Split be extended until August 26, 1996. Exchange Rule 1014(g)(ii) Advice B–6, which contains the text of Rule 1014, will be amended to reflect the new expiration date for the Pilot Program.

In addition, Exchange Rule 1014(g)(ii), which describes the Enhanced Parity Split, is being amended in order to correct an error that the Exchange represents was made when the program was amended in March 1995.[7] The Exchange statues that the intent of that amendment, as stated in the Phlx's proposal and in the Commission's approval order, was to give specialists the following levels of enhanced participation for parity trades involving more than five contracts: 60% of the contracts when the specialist is on parity with only one controlled account; 40% when the specialist is on parity with two controlled account; and to count the specialist as two crowd participants when the specialist is on parity with three or more controlled accounts.[8] The rule language proposed by the Exchange and subsequently approved by the Commission in connection with that filing, however, incorrectly states that ''where there are two *or more* controlled accounts are on parity * * * the specialist is entitled to 40% of the initiating order'' (emphasis added). The Exchange states that the phrase ''or more'' is incorrect. Accordingly, the Exchange is also proposing to delete the phrase ''or more'' from the rule language cited above. Similarly, the Exchange is also amending Section C of Advice B–6 to make the same change.

In the Commission's order originally approving the Enhanced Parity Split, it was noted that prior to granting an extension or permanent approval of the Pilot Program, the Commission would require the Exchange to make any changes necessary to ensure that competition is not being unnecessarily restrained and that investors are not being harmed by the enhanced participation provisions.[9] As to the issue of competition, the Exchange represents that it did find that the Enhanced Parity Split as originally approved was overly burdensome when only one or two controlled accounts were on parity with the specialist. As a result, the Exchange states that it corrected this problem by its amendment to the Enhanced Parity Split in March 1995, as discussed above, that

[1] *See* Securities Exchange Act Release No. 34606 (August 26, 1994), 59 FR 45741 (September 2, 1994).

[2] *See* Securities Exchange Act Release No. 35028 (November 30, 1994), 59 FR 63151 (December 7, 1994).

[3] A controlled account is defined as ''any account controlled by or under common control with a member broker-dealer.'' Customer accounts, which include discretionary accounts, are defined as all accounts other than controlled accounts and specialists accounts. *See* Phlx Rule 1014(g).

[4] *See* Securities Exchange Act Release No. 35429 (March 1, 1995), 60 FR 12802 (March 8, 1995).

[5] The Exchange also has an additional enhanced parity split program that is limited to ''new'' option specialist units trading newly listed options classes where the specialist is on parity with two or more registered options traders. The enhanced parity split for new specialist units was approved on a permanent basis and is therefore not included in this proposed rule change. *See* Securities Exchange Act Release No. 34109 (May 25, 1994), 59 FR 28570 (June 2, 1994).

[6] *See sipra* note 1.

[7] *See sipra* note 4.

[8] *Id.*

[9] *See supra* note 1.

modified the program with respect to situations where a specialist is on parity with only one or two controlled accounts. As to the issue of investor protection, the Exchange believes that the provisions requiring specialists to assure that customers are not disadvantaged by the Enhanced Parity Split has been strictly enforced without incident. Moreover, the Exchange represents that it has not received any complaints, either orally or in writing, regarding the Enhanced Parity Split, in general, or from investors regarding inequitable splits, in particular.

The Phlx represents that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5),[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices; 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 to protect investors and the public interest. Specifically, the Exchange represents that the proposal balances the competing interests of specialists and market makers while assisting specialists in making tight and liquid markets in their assigned options classes, and protects the public interest by requiring quarterly reviews and ensuring that customer orders are not disadvantaged by the Enhanced Parity Split.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) the Exchange provided the Commission with notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(e)[12] does not become operative prior to thirty days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. The Phlx has requested, in order for the Pilot Program to continue in operation without interruption, that the Commission accelerate the implementation of the proposed rule change so that it may take effect prior to the thirty days specified under Rule 19b–4(e)(6). The Commission finds that the proposed rule change is consistent with the protection of investors and the public interest and therefore has determined to make the proposed rule change operative as of August 27, 1995.

Additionally, the Commission believes that the conditions stated in the original approval order for extending the Pilot Program have been satisfied.[13] Specifically, the Phlx has stated that: (1) The previous amendments to the Pilot Program have served to assure that the Enhanced Parity Split is not unnecessarily restraining competition; (2) the Pilot Program contains sufficient safeguards to prevent customers from being disadvantaged by the application of the Enhanced Parity Split; and (3) no complaints have been received by the Phlx regarding the Pilot Program. As a result, the Commission believes that extending the Pilot Program for one year, until August 26, 1996, is appropriate and consistent with the Act.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–95–54 and should be submitted by September 18, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–21275 Filed 8–25–95; 8:45 am]

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[10] 15 U.S.C. 78f(b)(5) (1988).

[11] 17 CFR 240.19b–4(e)(6) (1994).

[12] *Id.*

[13] *See supra* note 1.

[14] The Commission notes that in connection with any future request by the Exchange for the Commission to either further extend or permanently approve the Pilot Program, the Exchange will be required to submit to the Commission a report discussing (1) whether the Pilot Program has generated any evidence of any adverse effect on competition or investors, in particular, or the market for equity or index options, in general, (2) whether the Exchange has received any complaints, either written or otherwise, concerning the operation of the Pilot Program, and (3) whether the Exchange has taken any disciplinary action against, or commenced any investigations, examinations, or inquiries concerning the operation of the Pilot Program, as well as the outcome of any such matter. Any request for either a further extension or permanent approval of the Pilot Program, along with the above report, should be submitted to the Commission no later than June 1, 1996.

[15] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36129; File No. SR–NASD–95–27]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Adjustment of Open Orders

August 22, 1995.

I. Introduction

On February 3, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities

Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The NASD seeks to amend Article III, Section 46 of the Rules of Fair Practice to provide that where the issuer of a security declares a cash dividend or other distribution of less than one cent ($.01), members will not be required to adjust open orders for such securities.

Notice of the proposed rule change appeared in the **Federal Register** on June 28, 1995.[3] No comments were received in response to the Commission release. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Article III, Section 46 of the Rules of Fair Practice requires members holding open orders to proportionally reprice such orders according to the value of the dividend or distribution on the date the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest. According to the NASD, shortly after the rule became effective in September 1994, several member firms questioned the necessity of complying with Section 46 if a dividend or other distribution was less than one cent ($.01).

The NASD has determined that where a dividend or other distribution of less than one cent ($.01) has been declared, the costs associated with complying with Section 46 exceed the benefits. Specifically, the NASD concluded that the effect of such a small dividend or other distribution on the price of the security is *de minimis* and, therefore, the likelihood that unadjusted orders will result in poor executions for customers is remote. Accordingly, the NASD proposes to amend Section 46 to state that where a dividend or other distribution is less than one cent ($.01), the price of the order shall not be adjusted.

III. Discussion

The Commission believes that the NASD's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, therefore, has determined to approve the rule change. Specifically, the Commission believes that the proposed rule change is consistent with the requirements of Section 15A(b)(6)[4] of the Act in that it eliminates the costs and inefficiencies associated with mandating the repricing of orders where the dividend or distribution is less than one cent ($.01).

IV. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the requirements of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–95–27 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Security.

[FR Doc. 95–21274 Filed 8–25–95; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Securities Exchange Act Release No. 35875 (June 21, 1995), 60 FR 33442 (June 28, 1995).

[4] 15 U.S.C. 78*o*–3(b)(6).

[5] 17 CFR 200.30–3(a)(12).

[Release No. 34–36127; File No. SR–PHLX–95–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing and Trading of DIVS, OWLS and RISKS

August 18, 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 May 8, 1995, the Philadelphia Stock Exchange, Inc. (''PHLX'' 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 Exchange. On July 12, 1995, the PHLX filed Amendment No. 1 (''Amendment No. 1'') to the proposal to address concerns raised by Commission staff.[1] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b–4 of the Act, proposes to list for trading ''DIVS'' (Dividend Value of Stock), ''OWLS'' (Options With Limited Stock) and ''RISKS'' (Residual Interest in Stock) (collectively hereinafter referred to as the ''Americus Derivatives''), which are new hybrid option products developed by Americus Stock Process Corp. (''ASPC''). It is contemplated that the Americus Derivatives will be issued and guaranteed by the Options Clearing Corporation (''OCC'') and will allow the purchase or sale of any of three distinct optionable economic interests inherent in a share of common stock. The PHLX proposes to adopt the new Rule 1000D series to apply to the trading of these securities. The text of the proposed rule change is available at the Office of the Secretary, PHLX and at 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 PHLX 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 PHLX 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

The PHLX proposes to list a new product developed by and licensed to it by ASPC that allows the purchase or sale of any of three distinct optionable economic interests inherent in a share of common stock. On January 3, 1995, the Exchange filed for approval to list and trade a product known as DIVS, ZIPS and SPECS (''DZ&S''). DZ&S provided, in part, for the pass-through of the voting rights of the underlying common stock to DZ&S holders.[2] The present filing proposes an alternative product that is similar in most respects to DZ&S except for the fact that the shareholder voting rights are not passed through to the holders of the proposed Americus Derivatives.

Each of the proposed new instruments, called DIVS, OWLS and RISKS, will be traded separately on the PHLX's equity options floor. The Exchange believes that, combined, the Americus Derivatives have all the characteristics of a share of the underlying common stock (except for voting rights) and that the ability to trade the Americus Derivatives as separate component instruments will provide novel hedge, arbitrage, speculation and investment opportunities.

[1] Letter from Shelle R. Weisbaum, Associate General Counsel, PHLX, to Sharon Lawson, Assistant Director, SEC, dated June 30, 1995. Among the issues addressed in Amendment No. 1 are provisions relating to position reporting, sales practice rules, margin and issuance size.

[2] Securities Exchange Act Release 35400 (Feb. 21, 1995), 60 FR 10887 (Feb. 28, 1995).

The Americus Derivatives will be regulated, except as described herein, by the rules governing standardized options. Proposed Rule 1001D establishes position limits of 1 million DIVS, OWLS and RISKS, each, respecting any particular underlying stock, and holders will be required to report to the Exchange when they have established an aggregated position of 20,000 DIVS, OWLS and RISKS.[3] The sales practice rules applicable to options (Rules 1024 through 1029) will also be applicable to sales of DIVS, OWLS and RISKS. (*See* Rule 1000D(a)[4]). The OCC will be the exclusive issuer of the Americus Derivatives which the Exchange proposes to issue in accordance with the disclosure scheme provided for under Rule 9b–1 of the Act. The Americus Derivatives will be issued in separate series with each series having its own distinct CUSIP number and trading symbol. The Americus Derivatives will be issued in book-entry only form. DIVS, OWLS and RISKS will be created when opening buy and sell orders are executed, and the additional execution of such orders will increase the open interest of the Americus Derivatives. Quotation and transaction reporting will occur through the facilities of the Options Price Reporting Authority.

The criteria for underlying common stocks upon which the Americus Derivatives will be based are the same criteria as utilized for standardized equity options listed on the PHLX under PHLX Rule 1009, with the additional limitation that only the top 250 U.S. market capitalized stocks that trade on either a national securities exchange or the NASDAQ national market will be eligible for consideration (*See* Rule 1009D). DIVS, OWLS and RISKS of a particular series will all be issued for the same length of time, currently contemplated to be up to 60 months, and therefore all components of the same series will possess the same termination date (''Termination Date''), as defined in PHLX Rule 1000D(b)(5). The Americus Derivatives will have a European-style[5] settlement similar to standardized options.

OWLS and RISKS of the same series also will have a coordinate termination claim (''Termination Claim''), as defined in PHLX Rule 1000D(b)(4). The Termination Claim is a preset price established at the time of the issuance of a new series of RISKS and OWLS and is used to determine these instruments' payout on the pertinent Termination Date. In accordance with PHLX Rule 1004D, Termination Claims will be set at the underlying stock price reflecting the most recent business day's consolidated closing value rounded to the nearest $2.50 increment for stocks priced at or below $25.00 or to the nearest $5.00 increment for stocks priced above $25.00. The PHLX may list new series of DIVS, OWLS and RISKS annually, or at more frequent intervals, depending on market conditions. No new series will be opened nor opening transactions be permitted if open interest in DIVS, OWLS and RISKS represents more than 10 percent of the outstanding shares of any underlying stock. (*See* Rule 1012D.)

The PHLX anticipates that the sum of the market prices of DIVS, OWLS and RISKS on the same underlying security with the same Termination Date and Termination Claim will approximate the actual market price for the underlying security. Because DIVS, OWLS and RISKS are each economic interests in a single underlying share, if the combined price of the related DIVS, OWLS and RISKS diverges from that of the underlying security, the PHLX believes that arbitrage opportunities would tend to remove the pricing disparity.

For customer margin purposes, DIVS and OWLS are contemplated to be margined as equity securities pursuant to Regulation T for initial margin purposes, which generally requires that equity securities be subject to a margin level of 50% of its current market value. Moreover, the PHLX proposes to apply Rule 722 for maintenance margin purposes, which would subject DIVS and OWLS to a 25% margin requirement for long positions and 30% margin requirement for each short position.[3] Furthermore, the PHLX proposes that where a short DIVS or OWLS position is covered by a long position in the underlying security or any other security immediately exchangeable or convertible (other than warrants) into the security, the margin will be 10% of the market value of the long securities position.[4]

The PHLX proposes to apply options margin to RISKS, requiring that the full value of the purchase price of the RISKS component be paid at the time of purchase. The minimum margin required for any short position would be 100% of the RISKS price plus 20% of the market value of the RISKS, except that the maximum margin shall not exceed the termination claim for the RISKS (''uncovered margin requirement''). The PHLX, however proposes that the margin treatment applicable to RISKS be subject to three exceptions:

(a) In subparagraph (4) of Proposed Rule 1722D, if a customer has a short RISKS position and a long RISKS position which expires on or before the termination date of the short position, the positions will be treated exactly like an options spread. The margin requirement will be the lesser of the uncovered margin requirement or the amount, if any, by which the termination claim of the short position exceeds the termination claim of the long position. If the long position expires after the short position, however, the margin on the short position will be the *lesser* of the uncovered margin requirement or 20% of the market value of the long position.

(b) In subparagraph (5) of Proposed Rule 1722D, covered RISKS short positions will be treated in a manner similar to that of covered call options positions under existing Rule 722(c)(2)(F). When a customer holds a short RISKS position and a long position in the underlying security or one exchangeable or convertible into the underlying security (excluding warrants), no margin will be required on the short position if the long position is margined in accord with Rule 722 and the long position expires after the termination date of the short RISKS position.

The margin requirement for a short RISKS position which is covered by a long warrant convertible into an equivalent number of shares of the underlying security, will be the lesser of the uncovered margin requirement or the amount by which the conversion price of the long warrant exceeds the termination claim of the short RISKS, provided the right to convert the warrant does not expire on or before the termination date of the short RISKS.

(c) Customers will also be allowed to use escrow receipts or letters of guarantee in lieu of posting margin for short RISKS positions similar to the options rule provisions in existing Rule 722(c)(2)(G).

Characteristics of Individual Components

DIVS

The basic characteristic of DIVS will be the right to receive substitute payments in the same amount as regular dividends declared and paid on the related shares of common stock for record dates that precede the Termination Date of the particular series of DIVS.

On each ex-dividend date, OCC will notify clearing members of debits they have incurred on OCC's books for any net short DIVS positions. These debits will be charged to such clearing members' accounts at OCC on payment

[3] *See* Amendment No. 1. The PHLX originally proposed a position reporting requirement of 200,000 contracts.

[4] *See* Amendment No. 1.

[5] A European-style option may only be exercised during a limited period of time before the option expires.

[3] Counsel for ASPC and the PHLX's Legal Department are currently seeking agreement and confirmation of this treatment from the staff of the Board of Governors of the Federal Reserve System.

[4] *See* Amendment No. 1.

date. Ex dates and payment dates will coincide with that of the underlying common stock. Hence, DIVS sellers assume the obligation to fund the substitute dividend payments with respect to DIVS as they arise. On the Termination Date for a particular series of DIVS, DIVS holders' rights will cease except as to rights to unpaid dividends declared as of a record date occurring prior to the Termination Date.

OWLS

Each OWLS will confer the right to receive on the Termination Date that number of common shares to which the OWLS relate having an aggregate value (determined solely by reference to the market price) equal to the lesser of (i) the Termination Claim for that class of OWLS or (ii) the market price of the common shares on the Termination Date.[5]

For example, if the Termination Claim for a class of OWLS is $50, and on the Termination Date of the OWLS the market price of the related common stock is $80, a holder of 100 OWLS would be entitled to receive that number of common shares with an aggregate market value of 100×$50=$5,000. $5,000/$80 equals 62.5 shares, so that an owner would be entitled to 62 whole shares and a payment of cash in lieu of the fractional share of $40.[6] Brokers holding short component positions for clients would make delivery of the shares and cash for any fractional shares. Brokers holding long component positions for their clients would receive the shares and cash for any fractional shares, which they will forward to their clients.

RISKS

RISKS will reflect the appreciation in value of the underlying stock above the Termination Claim for that series of Americus Derivatives. Specifically, RISKS will constitute the right to receive on the Termination Date that number of related common shares having a market value equal to the amount, if any, by which the market price of the related common shares exceeds the Termination Claim.

From the example given in the discussion above of OWLS, an owner of 100 RISKS with respect to the same series of OWLS would be entitled to receive the following number of common shares: 100×($80 − $50)=$3,000. $3,000/$80 equals 37.5 common shares, so the owner of the 100 RISKS would be entitled to 37 whole shares and a cash payment in lieu of the fractional share of $40.[7]

On the Termination Date for a class of OWLS or RISKS, OCC will instruct delivery, based on information reconciled with the brokers. Shares of the underlying stock will be delivered from the accounts of investors short the OWLS or RISKS, to satisfy the entitlements of those investors long the OWLS and RISKS.

Adjustments for Stock Splits or Stock Dividends

An owner of DIVS, OWLS and RISKS will become the owner of the number of such securities adjusted proportionally, and, in the case of OWLS and RISKS, the Termination Claim adjusted proportionally as well, on the record date for such event. For example, if a company has a two for one stock split, an owner of 100 DIVS would become the owner of 200 DIVS with the same Termination Date and receive dividends reflecting the new dividend policy; an owner of 100 OWLS would become the owner of 200 OWLS with the same Termination Date and one-half the Termination Claim; and an owner of 100 RISKS would become the owner of 200 RISKS with the same Termination Date and one-half the Termination Claim on such record date.

In the case of a stock dividend of 5% and OWLS and RISKS with a Termination Claim of $50, the adjustments would be as follows: an owner of 100 DIVS would become the owner of 105 DIVS; an owner of 100 OWLS would become the owner of 105 OWLS with an adjusted Termination Claim of $47.62; and an owner of 100 RISKS would become the owner of 105 RISKS with an adjusted Termination Claim of $47.62.

Liquidating, Special or Partial Liquidating Dividends

With regard to full liquidating dividends to shareholders, payments would be allocated among owners of DIVS, OWLS and RISKS of the same class as follows:

—DIVS would receive the discounted present value at the date of distribution of the liquidating dividend of an imputed dividend stream. It would be assumed that the most recent four quarterly dividends (unless the issuer has announced a change in its dividend policy, in which case assumed dividends complying with the policy would be used) of the issuer would continue through the latest record date preceding the Termination Date. That cash stream would be discounted to present value assuming payment on the usual dividend payment dates, using as the discount rate the interest rate on U.S. Treasury Notes having the closest maturity to the Termination Date.

—The remaining amount would be allocated between OWLS and RISKS based upon an adjusted Termination Claim. The Termination Claim would be adjusted by discounting the Termination Claim to its present value at the date of distribution of the liquidating dividend. The discount rate used would be the interest rate on U.S. Treasury Notes having the closest maturity to the Termination Date. OWLS will receive the amount of the distribution up to the adjusted Termination Claim, with any excess going to the RISKS.

Any adjustments made to the terms of the contract, as a result of any of these triggering events, would be handled for these instruments in much the same way as with any other standardized option and would be in accordance with any applicable OCC rules.

Transmission of money to beneficial owners would be accomplished through OCC and its participants in the same manner in which the substitute dividends would be transmitted from short DIVS to long DIVS.

For purposes of allocating distributions among DIVS, OWLS and RISKS, special dividends are those dividends which are declared as such by the issuer of the common shares, if that issuer does not also declare that it is changing its dividend policy by reducing or increasing the amount of its regular dividends. Special dividends would be allocated among DIVS, OWLS and RISKS as follows:

—DIVS would be allocated and receive that portion of the special dividend equal to the quotient of (a) the annual dividend divided by (b) the last scale price[8] of the stock on the day prior to the ex-distribution date reduced by the amount of the special dividend which quotient is multiplied by (c) the amount of the special dividend.

—If the remaining portion of the special dividend were less than the present value of the Termination Claim, the Termination Claim for OWLS and RISKS would be reduced, but not below zero, by the future value at the Termination Date of the remaining portion of the special dividend. All determinations of present value and future value are computed using the maximum potential internal rate of return (''IRR'') for OWLS. The maximum potential

[5] All references to market price are to the last sale price on the relevant day as set forth on the appropriate consolidated tape, or if there is no such last sale price, the mean of the closing bid and ask price or as otherwise approved by the Commission prior to the commencement of trading in a series.

[6] If the market price of a share of the related common stock on the Termination Date had been $50 or less, the owner of the 100 OWLS would have received all 100 common shares. Exercise procedures in accordance with OCC guidelines would be followed on Termination Date.

[7] If the market price of a common share had been $50 (the Termination Claim) or less, the RISKS would expire worthless.

[8] If there is no last sale price, the mean of the closing bid and ask prices will be used.

IRR for OWLS is computed assuming purchase on the ex-distribution date at a price equal to the average closing price for the 10-day trading period preceding the announcement of the special dividend and receipt of the Termination Claim on the Termination Date (such discount rate being hereinafter the ''maximum potential IRR for OWLS'').

—The remaining portion would be allocated and paid to the OWLS.

—If the remaining portion of the special dividend equals or exceeds the present value of the Termination Claim, OWLS would receive that portion of the special dividend equal in amount to such present value; the Termination Claim would be adjusted to zero and any additional amount of the special dividend would be allocated and paid to the RISKS. Any further liquidating, special or partial liquidating dividends would be allocated between DIVS and RISKS; the OWLS having received in full an adjusted Termination Claim.

For purposes of allocating distributions made by the issuer of the related common shares among DIVS, OWLS and RISKS, partial liquidating dividends are all dividends other than regular dividends, liquidating dividends and special dividends. It is assumed that partial liquidating dividends would be accompanied by an announcement of a reduction in the regular dividends paid by the issuer.

Partial liquidating dividends would be split among the three components as follows:

—DIVS would be allocated and receive that portion of the partial liquidating dividend equal to the discounted present value of the amount of the reduction in the quarterly dividend as stated in the newly announced policy of the issuer. This computation would be made assuming payment on the usual dividend payment dates, using as the discount rate the interest rate on U.S. Treasury Notes having the closest maturity to the Termination Date.

—If the remaining portion of the partial liquidating dividend were less than the present value of the Termination Claim, the Termination Claim for OWLS and RISKS would be reduced, but not below zero, by the future value at the Termination Date of the remaining portion of the partial liquidating dividend. The determination of present value and future value for OWLS will be computed using the maximum potential IRR for OWLS. In this case, the maximum potential IRR for OWLS is computed assuming purchase on the ex-distribution date at a price equal to the average closing price for the 10-day trading period preceding the announcement of the partial liquidating dividend and receipt of the Termination Claim on the Termination Date.

—That remaining portion would be allocated and paid to the OWLS.

—If the remaining portion of the partial liquidating dividend equals or exceeds the present value of the Termination Claim, OWLS would receive that portion of the liquidating dividend equal in amount to such present value; the Termination Claim would be adjusted to zero and any additional amount of the partial liquidating dividend would be allocated and paid to the RISKS. Any further liquidating or partial liquidating dividends would be allocated between DIVS and RISKS; the OWLS having received in full an adjusted Termination Claim.

Spin-offs and Split-ups. In the case of spin-off or split-up transactions, each DIVS, OWLS and RISKS holder would become the owner of two issues of DIVS, OWLS and RISKS—one for each company and each having the same number of such securities with the same Termination Date. The Termination Claim would be allocated between the two issues of OWLS and the two issues of RISKS based upon the ratio of the prices of the underlying common shares at the opening of trading in the underlying common shares on the effective date of the spin-off or split-up transaction.

Mergers. If the company that issued the common shares from which the DIVS, OWLS and RISKS were created were to be the surviving company, there would be no adjustment to the terms of the DIVS, OWLS and RISKS unless, as part of such transaction, there was a stock split, stock dividend, partial liquidating dividend or other corporate transaction that would require adjustment. If the issuer were not the surviving entity, each owner of DIVS, OWLS and RISKS would receive his share of the compensation given for each common share as if a liquidating dividend was paid or an exchange offer was made, as appropriate.

Rights Offerings

If the issuer of stock from which DIVS, OWLS and RISKS were created were to make a rights offering, the rights would be allocated to the OWLS and the Termination Claim would be reduced by the future value of the rights calculated to the Termination Date. The future value would be computed using as the interest rate, the maximum potential IRR for OWLS and using the average closing sale price for the first 10 days of trading in the rights.

Exchange or Tender Offers

If there were an exchange or tender offer for the common shares to which DIVS, OWLS and RISKS relate, existing option procedures and practices would apply.

These particularized procedures for adjusting the contract specifications of any open interest in any particular DIVS, OWLS and RISKS series will be well documented in the eventual disclosure document to be published by the issuer, OCC.

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 which provides in part that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to facilitate transaction in securities, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at

the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–95–19 and should be submitted by September 18, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–21276 Filed 8–25–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2805]

Texas; Declaration of Disaster Loan Area

Webb County and the contiguous counties of Dimmit, Duval, Jim Hoag, La Salle, Maverick, McMullen and Zapata in the State of Texas constitute a disaster area as a result of damages caused by severe thunderstorms, flooding, hail and tornadoes which occurred on June 8 through June 11, 1995. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on 10–20–95 and for economic injury until the close of business on 5–21–96 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 280506 and for economic injury the number is 861500.

[9] 17 CFR 200.30–3(a)(12) (1994).

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 21, 1995.

Cassandra M. Pulley,

Acting Administrator.

[FR Doc. 95–21251 Filed 8–25–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended August 4, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–362.
Date filed: August 1, 1995.
Parties: Members of the International Air Transport Association.
Subject: r–1—001z, r–6—64L, r–11—073s, r–16—092kk, r–2—002, r–7—064y, r–12—075i, r–17—092o, r–3—015n, r–8—071k, r–13—075p, r–18—210a, r–4—044L, r–9—071n, r–14—084kk, r–19—311k, r–5—054L, r–10–073jj, r–15—087ff.
Proposed Effective Date: January 1, 1996.

Docket Number: OST–95–375.
Date filed: August 3, 1995.
Parties: Members of the International Air Transport Association.
Subject: COMP Telex Mail Vote 751, Currency Change from Cuba, r–1—010n, r–2—010ee.
Proposed Effective Date: October 1, 1995.

Docket Number: OST–95–376.
Date filed: August 3, 1995.
Parties: Members of the International Air Transport Association.
Subject: International Air Transport Association, c/o David M. O'Connor, 1001 Pennsylvania Ave., NW. #285, Washington, DC. 20004.

Application of the International Air Transport Association, pursuant to sections 41308 and 41309 of Title 49 of the United States Code and §§ 303.03, 303.05 and 303.30(c) of Title 14 of the Code of Federal Regulations, requests on behalf of member airlines of the International Air Transport Association (IATA) that the Department approve and confer antitrust immunity on two amendments to the Provisions for the Conduct of IATA Traffic Conferences (the Provisions).

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–21309 Filed 8–25–95; 8:45 am]

BILLING CODE 4910–62–P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 4, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–366.
Date filed: August 1, 1995.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 29, 1995.
Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. 41102, and subpart Q of the Regulations requests a certificate of public convenience and necessity to engage in foreign air transportation of persons, property, and mail between Tampa, Florida, and Toronto, Ontario, Canada.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–21310 Filed 8–25–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Noise Exposure Map Notice, Springfield-Beckley Municipal Airport, Springfield, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Springfield, Ohio, for Springfield-Beckley Municipal Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Lawrence C. King, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET

ADO–670.2, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487–7293.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Springfield-Beckley Municipal Airport are in compliance with applicable requirements of Part 150, effective August 11, 1995.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and related description submitted by the city of Springfield, Ohio, for Springfield-Beckley Municipal Airport. The specific maps under consideration are the ''Existing (1993) Noise Exposure Map'' and ''Future (1998) Noise Exposure Map.'' The FAA has determined that these maps for Springfield-Beckley Municipal Airport are in compliance with applicable requirements. This determination is effective on August 11, 1995. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through the FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the map are available for examination at the following locations:

Federal Aviation Administration, Great Lakes Region, Airports Division Office, 2300 East Devon Avenue, Room 269, Des Plaines, Illinois 60018

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111

Mr. Matthew J. Kridler, Manager, City of Springfield, Springfield City Hall, 76 East High Street, Springfield, OH 45502

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Belleville, Michigan, on August 11, 1995.

Dean C. Nitz,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 95–21308 Filed 8–25–95; 8:45 am]

BILLING CODE 4910–13–M

Intent to Rule on Application to Use the Revenue From a Passenger Facility Charge (PFC) at Houghton County Memorial Airport, Hancock, Michigan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Houghton County Memorial Airport, Hancock, Michigan, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 27, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Sandra D. LaMothe, Airport Manager, of the Houghton County Airport Committee at the following address: Houghton County Memorial Airport Route 1, Box 94, Calumet, Michigan 49913.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Houghton County Airport Committee under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jon B. Gilbert, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (313–487–7281). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites pubic comment on the application to use the revenue from a PFC at Houghton County Memorial Airport, Hancock, Michigan, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 9, 1995, the FAA determined that the application to use the revenue from a PFC submitted by Houghton County Airport Committee was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 14, 1995.

The following is a brief overview of the application.

Level of the PFC: $3.00.

Actual charge effective date: July 1, 1993.

Estimated charge expiration date: March 1, 1996.

Total approved net PFC revenue: $175,588.00.

Brief description of proposed project: Construct Partial Parallel Taxiway ''C''.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Houghton County Airport Committee.

Issued in Des Plaines, Illinois, on August 18, 1995.

Benito DeLeon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 95–21307 Filed 8–25–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. 95–14]

Framework for Guiding FHWA Policy Decisions Affecting Freight Transportation

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Interim policy statement; request for comments.

SUMMARY: This notice requests comments on a draft framework intended to identify the principles which will guide FHWA policy decisions affecting freight transportation systems. These principles do not reflect a priority in their order—they move from the most generic concepts through to more specific ones, and contain many common elements. This framework focuses on the highway element of those freight transport systems but recognizes the importance of intermodal connectivity for a growing portion of U.S. freight transport. This interim statement could serve as a building block for a broader Departmental intermodal freight policy. In addition to a brief discussion of each of the principles, several key current issues are discussed that illustrate how the principles are reflected in questions of Federal interest.

DATES: Comments should be received by October 27, 1995.

ADDRESSES: Submit written, signed statements to FHWA Docket No. 95–14, FHWA, Room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All statements received in Docket No. 95–14 will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of their statements must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Keane, Office of Policy Development, Transportation Studies Division, at (202) 366–9242; or Mr. Charles Medalen, Office of Chief Counsel, Motor Carrier Law Division, at (202) 266–1354, FHWA, DOT, 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

Efficient, effective, and safe highway systems play a critical role in the U.S. economy; nearly all the essentials of modern life travel on them, whether in the delivery of intermediate goods to production plants or shipment of goods to final market. The highway system is an especially important foundation of commerce as it provides access to raw materials, labor, and markets. Maintaining and improving highways and their connections to intermodal freight facilities, while producing a safe environment for the traveling public, ensures shippers and carriers the freedom to adapt quickly to changing markets and environments with some measure of confidence that the spatial barriers between markets can be overcome. Therefore, the FHWA has developed a draft framework of principles by which to guide policy decisions having an impact on freight transportation systems. The FHWA invites comments on this draft framework, which is set forth below.

Draft Policy

Part I—The Principles

Highway and intermodal freight transport policy can be fashioned to improve the Nation's long-term economic prospects and vitality. As in all policy decisions considering the interests of the public at large, a balance must be struck among many worthy goals. In defining the public interest, Federal highway programs and freight-related policies should advance the following principles:

1. Reflect the Importance of Freight Transportation to National and Regional Economies

Transportation policy with regard to investment and regulatory decisions must take into consideration the impacts that such policies may have on the movement of both people *and* goods.

The relationship between transportation and economic development is obvious. Highways and other modes of transportation enable individuals to commute to their workplaces; transportation is also a critical part of the production process. While the magnitude of the relationship has been debated, it is well known that the quality of the transportation system is closely tied to the industrial and employment base of regions. Good, dependable transportation is an important factor in any region's current economic well-being as well as its growth potential. The U.S. economy as a whole is highly integrated and is becoming more closely tied to the global economy. To retain and expand its economic vitality and competitive position, the Nation must ensure that its producers and carriers have quality access at the lowest reasonable cost, and in turn, that its markets are accessible.

A basic characteristic of highway networks is that automobiles, trucks, and buses share the common highway. The combination of large freight vehicles with a smaller, lighter passenger car fleet causes special safety risks. Large vehicles impose unique demands on their drivers and those sharing the road with them. Their size and handling characteristics must be taken into consideration in the design of roadways. Increasingly, the environment in which the vehicle is operated is congested and physically deteriorated. Infrastructure planners, providers, and operators should adopt a customer orientation for freight movement, recognizing that freight and passenger transportation are distinctly different markets with fundamentally different requirements.

2. Adopt a Long-Term Perspective for Freight Decisions

Since investments in highway infrastructure have such long usable lives, decisions should be as future-oriented as possible, taking into account the current and future demands of the freight market.

Transportation agencies should maintain, operate, and improve highway systems commensurate with current and projected demand. One element of that investment is the development of an

understanding (qualitatively and quantitatively) of the demand for goods movement and its incorporation into planning and forecasting. Lack of effective transportation can lead to the demise of business and jobs or be an impediment to growth in any area of the State. Agencies should recognize that freight demand is dynamic: the mix of supply and demand changes over time.

Although State Departments of Transportation and Metropolitan Planning Organizations (MPO) have relatively sophisticated passenger transportation planning procedures, most agencies have little experience in developing forecasts of freight transportation movements for statewide freight transportation plans. The transportation needs of basic industries are important criteria in setting program priorities. Economic considerations should be combined with other measures of transportation need to develop plans for transportation systems and networks. Life-cycle cost principles should be reflected at the program, management system, and project level.

Increasingly all modes of freight transportation are using computerized technologies to track cargo and improve the efficiency of pickup, delivery, and terminal operations. Work underway in the commercial vehicle operations element of the Intelligent Transportation System (ITS) program holds great promise for augmenting private sector programs by improving the efficiency and safety of motor carrier operations, including intermodal operations. These kinds of forward-looking considerations should be incorporated into a future-oriented vision of freight demand.

3. Ensure that Priority Consideration for Safety is Affirmed

The DOT's strategic plans have clearly enunciated the importance of safety. We are guided by a vision statement which leads with ''the Nation's need for the safe . . . movement of people and goods . . .'' and a mission statement which follows with a pledge to ''[i]mprove all aspects of surface transportation safety.'' The plan's safety goal is to ''[i]mprove surface transportation safety through a coordinated effort to reduce fatalities, injuries, property damage, and hazardous material incidents.''

The rationale for Federal involvement in transportation safety has been that the marketplace alone will not produce an acceptable level of transportation safety and, therefore, it should be provided by the public sector. Government policies are established to ensure that the truck and bus industries operate safely. The ultimate goal of these policies has been to prevent accidents and minimize the loss associated with accidents. Whenever the government issues regulations or allocates resources that affect motor carrier safety, it balances the public's desire for efficiency and mobility in transport services with the desire for improved safety.

While many truck safety policies are initiated at the Federal level, responsibility for truck safety investment and oversight is shared among all levels of government and the industry. The recognition of this shared responsibility has led to major improvements in truck safety over the last several years.

Improving truck safety will require increased attention to: operator proficiency; improvements in vehicle design and performance; improved data collection and more comprehensive information to target resources at high risk carriers; better analysis and more focused research on vehicle and driver performance, coupled with greater use of technical innovations; a stronger link between Federal, State, local, and private industry safety initiatives; and designing road systems to accommodate large vehicles.

Technology, innovation, and research hold great potential to improve the productivity *and* safety of freight transportation. Various technologies being developed under the ITS program should substantially improve motor carrier safety and productivity. On-board safety sensors to automatically measure the safe condition of the vehicle can be a reality in the near future. Existing vehicle technologies such as antilock braking systems, B-trains and double drawbar dollies also are available to improve the safety of multi-trailer combinations.

4. Promote Equity and Cost-Effectiveness

Decisions regarding allocating resources and imposing regulatory controls should be equitable and cost-effective. They should recognize the costs imposed across industry sectors, across transport modes, across regions, and across classes of consumers. To the maximum extent possible, each mode and class of user should pay the costs of public facilities and services provided for their operations.

Direct or indirect subsidies may affect competition among the freight modes. Such subsidies result when user fees and other policies result in the various modes not paying the full costs of their operations. To the extent compatible with other goals, government subsidies that affect competition among the modes should be minimized.

Since governmental agencies are allocating scarce public resources, investment options should be evaluated against the opportunity cost in the private market. Threshold criteria should require benefits to exceed the cost. The benefits and costs which accrue directly to freight carriers and indirectly to their customers should be explicitly included in evaluations of system improvements and/or regulations. The assessment of infrastructure investment and regulatory controls should include measurement of the full range of impacts, appropriately discounted over their entire life cycle. For example, this means that the impacts of delay and vehicle operating costs, rehabilitation and maintenance activities in work zones should be taken into consideration. Another example relates to incorporating economic benefits derived from system efficiencies which accrue to communities and shippers, often referred to as economic development benefits.

5. Encourage an Integrated, Intermodal Systems Approach

The difficulties that result from different modes and carriers working together should not be aggravated by unnecessary governmental barriers or inadequate connections due to poor system design.

The productivity of trucking firms and their customers depend on highways and their connections with truck terminals, ports, railroads, and airports. Moving freight by a combination of two or more modes in an integrated manner is an option that allows the superior attributes of each mode to be utilized. This does not mean that multi-modal movements are inherently better than single-mode movements. It does mean that, given the latitude to choose the best mode(s) for the move, carriers will be able to provide the most efficient transport with the potential for the lowest cost. Developments in U.S. manufacturing practice contribute to the growing trend toward intermodal shipments. It is critical that State and MPO plans, programs, and management systems address intermodal access and connections.

The National Highway System (NHS) will facilitate U.S. international trade and growing domestic productivity through improved efficiencies in the movement of goods produced for and by U.S. businesses. Improving the quality of connections among transportation modes, aiming toward smooth and seamless interchange, along with improving the highway links

themselves, are two examples of the benefits that will accrue from designation of the NHS.

6. Be Sensitive to Externalities Caused by Transportation of Goods

Take appropriate action to reduce or mitigate externalities.

Many costs of highway freight transportation are not accounted for in the marketplace and thus are not recognized directly by motor carrier operators. These costs include environmental impacts (such as exhaust emissions, noise, and community impacts) and safety. Some of these external costs can be mitigated by regulatory actions (e.g., requiring cleaner or quieter vehicles), or programmatic means (e.g., improved traffic safety inspection programs). Market pricing approaches such as emissions or congestion pricing have also been proposed.

It is important to estimate the incidence and magnitude of external costs associated with highway freight transportation before regulatory or pricing solutions are implemented. It also is important to estimate the impacts of such solutions on motor carriers, including impacts on their competitive position versus other modes. A further consideration is the extent to which external costs are associated with operations of those competing modes.

The importance of these estimates is reflected in Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) planning reforms, which require consideration of factors such as social, economic, energy, environmental, and land use/development effects of transportation decisions. Quantification should be encouraged as a means to bring these issues into the policy equation, with a common measure of value. The estimates and their use should reflect the limitations of such analysis. Methodologies and techniques for capturing these impacts should be pursued vigorously.

7. Provide an Environment That Will Enable the Transportation Industry To Be Strong and Internationally Competitive

Recognize that a strong and internationally competitive transportation industry requires a sound and effective regulatory framework that reserves economic regulation only for the most obvious instances of transportation market failure. Within that framework, market-based approaches to regulation can provide carriers with the flexibility needed to comply with regulations while maintaining an incentive to offer cost-effective, competitive service. In this spirit, the U.S. Department of Transportation has stated in its report to Congress on the functions of the Interstate Commerce Commission that a new regulatory approach has emerged in recent years, one which is ''recognizing competition as the best regulator of transportation * * *.'' The Department therefore, has recommended removing various archaic Federal laws which are no longer applicable because of structural changes in the market for freight transportation.

Also, the Department encourages innovation through public-private financing partnerships to achieve greater efficiencies in both the private and public sectors. Cost-sharing and public-private partnership concepts provide new opportunities for the States to increase investment in needed transportation facilities and to work with the private sector to promote innovative solutions to transportation problems. The North American Free Trade Agreement (NAFTA) provides an example where the public and private sectors can work together to eliminate unnecessary cross-border barriers to trade.

Part II—Contemporary Issues

The above principles represent those values that we feel should be reflected in a freight policy. The remainder of this document discusses a series of topical issues in a manner which illustrates how many of the functional areas which the Department must address should be approached in the context of a comprehensive freight policy. They reflect a perspective that embraces highway system stewardship from both a facilities management and motor carrier operational perspective. The above principles are a starting point for the questions of governmental interest, generally, and the Federal interest, in particular.

1. Infrastructure—System Design and Investment

One of the strengths of the highway motor carrier transport mode is its inherent flexibility advantage and thus high service quality. New economic processes and arrangements place high value in the characteristics of reliability and security in addition to speed. The environment in which large vehicles operate is key to improving truck safety. Road design significantly affects truck accident rates. For example, the rate of fatal combination truck accidents on non-Interstate roads is significantly higher than the rate on Interstate roads. The interface between roadway geometry and truck safety requires scrutiny when road design alternatives are considered or highway improvements are made.

A revolution in freight transportation is occurring as our domestic highway programs face a major crossroads. The completion of the Interstate System and designation of the NHS signal a new stage in our highway network. Due to demographic and economic changes throughout the United States, the Interstate System alone cannot adequately serve the needs of modern goods movement. The NHS is intended to concentrate Federal resources on those elements of the principal arterial system which are crucial to interstate and international commerce.

Much of the Nation's industrial capacity has moved from its northeastern urban origins to rural areas of the country. International manufacturing arrangements are growing in importance. With implementation of the NAFTA, the need for fast, reliable transportation connecting Mexico, the United States, and Canada will become even more vital. The NHS will be focused on and provide for the current and future national highway transportation needs such as those resulting from changing trade and traffic flows.

Improving the capacity, safety, and structural life of the NHS will facilitate U.S. international trade and growing domestic productivity through improved efficiencies in the movement of goods produced for and by U.S. businesses. With Federal input, State transportation plans and specific projects must ensure that the objectives of States and localities contribute to the NHS's goal of improved economic competitiveness through improved mobility.

Although the NHS will enhance the economic competitiveness of U.S. businesses by improving highway transportation, these gains will not be maximized unless the quality of connections among transportation modes is improved. The National Transportation System planning framework will help in the development of a smooth and seamless interchange among the transportation modes by highlighting for planners the important intermodal connections nationwide and identifying any impediments to the efficient movement of goods through these connections. This, in turn, will enhance the efficiency of freight carriers and the general economic performance nationally as transport costs decrease.

3. Intermodal Freight Planning

An important step in freight planning is to see the system as a whole—to understand freight movements as a system of supply chains and distribution networks. Since an important Departmental goal is to contribute to the Nation's economic performance, this implies the desire to select the most important movements to address, not just the best way to address them. This requires the identification of the needs of shippers with respect to infrastructure and/or freight operations.

As our concerns have matured to the perspective of total system management, six specific management systems (pavement, bridges, safety, traffic congestion, public transportation, and intermodal transportation facilities) and the traffic monitoring system have been identified that will provide information concerning both the condition and the performance of the existing and future transportation system.

Although no ''freight management system'' is specifically identified in the aforementioned list, freight transportation should be an important consideration within each of the management systems. The freight customer can be said to affect, and be affected by, all these systems. Freight consumers' perspectives can take on several dimensions, corresponding to the service provider/carrier, the shipper, and the ultimate consumer of the commodities (the value of which contains a transport component). Goods movement deserves significant treatment beginning with the inventories/descriptions of usage and systems. This should be followed up by evaluations of those systems as input to public decisionmaking to identify strategic freight investments.

Thus, determining transportation infrastructure needs for freight is as much a demand-side assessment as it is a supply-side one. An important element of system strategy is to determine the facility or operational change needed to fit the job. Designing a quality and cost-effective facility—that is, the supply side—comes after determining which services are the most needed.

3. Safety Analysis and Research

Truck accidents are frequently caused by errors of either truck drivers or drivers of other vehicles involved in collisions with trucks, rather than failures of vehicle components. Nevertheless, vehicle design and performance affects truck drivers' ability to respond to, or recover from, those errors. Additionally, safe highway design and special safety features reduce the potential for accidents and the severity of accidents that occur. Therefore, a balanced program focused on optimizing driver, vehicle, and highway performance is warranted. Attention will be given to issues of human behavior, operator proficiency, emergency response, and training to reduce the influence that deficiencies in any factor may have on accidents. Additionally, efforts will be made to optimize vehicle collision avoidance and crashworthiness performance.

Understanding the factors that influence truck accident rates will lead to better, more informed freight policy decisions. Assessing the value of safety investments so that informed public decisions can be made requires that truck travel data, accident information, and the investment levels themselves be more comprehensive and accurate. Since a variety of factors affect the safe operation of trucks, a more comprehensive approach to data collection is needed. Factors such as the growth in truck travel, industry structure, traffic densities, and passenger and freight vehicle dimensions and weights are changing. Improved data is needed to better monitor both safety program performance and carrier performance.

More analysis and research on motor carrier safety is needed to identify changes in safety levels and the factors producing these changes, evaluate policies that may affect these factors, and target safety investments accordingly. The analysis must be coupled with research to answer questions on vehicle, roadway, and driver performance and develop new technologies that will improve motor carrier program effectiveness and efficiency.

4. Finance and Taxation

Publicly provided facilities and services for highway/motor carrier freight transportation are financed in whole or in part by user fees. The extent to which user fees assessed on each mode cover public costs varies widely. Several criteria are important in evaluating the level and structure of user fees, including:

1. To the maximum extent possible, user fees should cover appropriate costs of public infrastructure improvements and other public programs;

2. Users should contribute a proportionate share of their costs of facilities and services; and

3. Federal subsidies to one mode should not unfairly affect competition with other modes.

Federally-sponsored studies of freight user fees have been conducted for highways, airports, railroads, and waterways. These studies vary significantly in detail; comprehensive cost allocation studies have been conducted for highways and airways while more general studies have been conducted for the other modes. The last major Federal Highway Cost Allocation Study in 1982 showed that heavy trucks paid substantially less in Federal user fees than their estimated Federal highway cost responsibility. User fee adjustments were made in 1982 and 1984 to partially address study findings. However, recent increases in the fuel tax have likely changed the equity of the overall user fee structure. Also, the ISTEA changed the Federal program structure, system responsibility, and flexibility in the use of funds, which would likely change cost responsibility among users. A new Federal cost allocation study is underway to evaluate implications of these and other prospective changes in highway or intermodal programs.

5. Truck Size and Weight (TS&W) Policy

The question of appropriate size and weight limits for trucks has always been a difficult one. It conjures up images of ''grandfather rights'' from the Interstate era, conflicting views of proper State-Federal relationships, rival economic interests, and uncertainty as to the operational safety of various types of trucks.

The TS&W issues are extremely complex; they relate not only to questions of highway safety and stewardship but to local, State, and national economic performance. At a time when transportation is becoming a larger part of the goods *production* as well as distribution systems, the effects of additional regulation on productivity take on renewed significance.

The macroeconomic impacts of change to these regulations are initially private ones: equipment costs; fuel consumption; and personnel expenditures. The direct costs imposed, if not counterbalanced, are public ones: pavement and bridge deterioration; and safety consequences. However, changing trucking productivity quickly translates to changes in costs and efficiency for shippers, the economy as a whole and, thus, the consuming public.

Extended fact-finding and debate are necessary to do justice to TS&W issues. Good TS&W policy helps ensure safe and efficient freight movement on our Nation's highway and intermodal systems. Beyond the general freight principles which began this document,

changes at this juncture should also, to the extent possible, address:

1. Highway and vehicle safety through a performance based regulatory approach;
2. Efficient interstate and international commerce through advanced highway and vehicle technologies;
3. Streamlined, uniform, and enforceable administrative procedures and requirements for permitting and taxation purposes;
4. Compatible vehicle and infrastructure design; and
5. Equitable recovery of public costs.

The TS&W policies directly influence truck designs and configurations. Choices made in this regard by motor carriers and truck designers, in response to size and weight constraints, affect not only the amount of weight carried by a truck and the effect that weight has on highway infrastructure, but also the braking and handling and stability properties of the vehicle. Vehicle size and weight policies should be structured to encourage and ensure vehicle designs and configurations that are optimized relative to all these concerns.

The TS&W policy and highway user fee issues are virtually inseparable. Pavement and bridge costs attributable to heavy vehicles will rise (or fall) as the result of size and weight policy changes. Significant changes in size and weight limits should not be considered without evaluating appropriate motor carrier user fees. Fines and other penalties have proven to be ineffective deterrents to overweight operations because they are too low to offset potential profits from operating overweight. This is borne out by Federal estimates that show 10 to 20 percent of all combinations operate illegally overweight. State permit fees for overweight operations generally are too low to cover added pavement and bridge costs associated with the overweight operations. States that issue overweight and oversize permits should consider setting permit fees at levels that reflect added highway costs of overweight operations to improve the effectiveness of their TS&W enforcement efforts.

In an effort to better understand the effects of TS&W policy changes on these many factors, the Department has undertaken a comprehensive TS&W study to examine the relationship between TS&W policy and safety, pavement and bridge condition, shipper logistics, truck operating costs, intermodal operation, and energy and environmental concerns, to evaluate the appropriate scope and extent of Federal involvement. The FHWA published a notice in the **Federal Register** on February 2, 1995, announcing the study and soliciting comments (60 FR 6587).

Regarding international commerce, wide disparity between the standards across the United States, Mexico, and Canada (as well as those across our States) often inhibit the efficient flow of continental trade. In a NAFTA context, the Department is committed to finding a means, in consultation with Congress, to make TS&W and safety standards compatible. Further, significant growth in international container traffic, combined with varying international TS&W standards, has created enforcement and economic efficiency concerns.

6. Highway Freight Transportation and Air Quality

With the passage of the Clean Air Act Amendments of 1990 and the subsequent Federal Implementation Plan (FIP) for California in 1994, concerns have been raised as to the effects that air quality regulations may have on freight transportation in the near future, especially in California. While air quality improvement is an important public policy objective, it is important to remember that there are typically multiple objectives and implications in all major public policy decisions, and these must be balanced. For instance, the original FIP issued on May 5, 1994, contained several proposals which it was thought might significantly impact the freight industries, and hence regional and national economic performance. Since that time, the FIP has been revised, based on public comment, to more effectively balance the national objectives of improving air quality and maintaining economic competitiveness. The currently proposed standard of 2.0 g/bhp-hr (grams per brake-horsepower-hour) for nitrogen oxide emissions and the implementation time frame is considered more feasible by industry.

Freight concerns are likely to play a more prominent role in other State Implementation Plans now being considered. Recognizing these concerns, the Environmental Protection Agency recently set up a government and industry task force to look at various freight and air quality issues.

Authority: 23 U.S.C. 315; 49 U.S.C. 301, 302, 305; Pub. L. 102–548, 106 Stat. 3646.

Issued on: August 21, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–21305 Filed 8–25–95; 8:45 am]

BILLING CODE 4910–22–P

Federal Railroad Administration

Fiscal Year 1995 Railroad User Fee Calculations

AGENCY: Federal Railroad Administration; Department of Transportation.

ACTION: Notice.

SUMMARY: The Federal Railroad Administration is today publishing its fiscal year 1995 assessment rates supporting the collection of railroad user fees.

FOR FURTHER INFORMATION CONTACT: Vicky McCully, Railroad User Fee Officer, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC. 20590; telephone (202) 366–6569.

SUPPLEMENTARY INFORMATION: In its regulations implementing the Railroad User Fee provisions of section 20115 of Title 49, United States Code (formerly section 216 of the Federal Railroad Safety Act of 1970 (see 49 CFR 245.301(a)), the Federal Railroad Administration (FRA) indicated that it would publish a notice each year in the **Federal Register** identifying FRA's calculations of the total railroad user fee to be collected for the fiscal year, the assessment rate per train mile, the assessment rate per employee hour, and the assessment rate per road mile (as adjusted by the sliding scale).

For fiscal year 1995, user fee assessments totaling $40,584,892 are based on 658,208,164 total industry train miles; 150,820 total industry road miles; and 518,612,773 total industry employee hours.

The base assessment rate per road mile is $93.99, with applicable adjustments for the sliding scale as follows:

Train mile/road mile ratio	SF [1]	RM rate [2]
1201 and above	1.00	$113.39
1001 to 1200	0.75	70.49
751 to 1,000	0.50	46.99
501 to 750	0.25	23.50
Up to 500	0.00	0.00

[1] SF refers to scaling factor.
[2] RM Rate refers to Road Mile Rate.

The assessment rate per train mile is $.033842. The assessment rate per employee hour is $.007809.

Issued in Washington, DC on August 22, 1995.

Donald M. Itzkoff,

Deputy Federal Railroad Administrator.

[FR Doc. 95–21306 Filed 8–25–95; 8:45 am]

BILLING CODE 4910–06–P

Petition for a Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of Federal railroad safety regulations. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket No. HS–92–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The waiver petition is as follows:

Algers, Winslow and Western Railway Company (AWW) FRA Waiver Petition Docket No. HS–95–10

The AWW seeks a continuation of a previously issued exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The AWW states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered.

The AWW provides freight service over 16 miles of trackage within Pike County, Indiana. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Issued in Washington, DC, on August 22, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–21249 Filed 8–25–95; 8:45 am]

BILLING CODE 4910–06–M

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 CFR Part 236

Pursuant to Title 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of Title 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3361

Applicants

Consolidated Rail Corporation, Mr. J. F. Noffsinger, Chief Engineer—C&S, 2001 Market Street, P. O. Box 41410, Philadelphia, Pennsylvania 19101–1410

CSX Transportation, Incorporated, Mr. D. G. Orr, Chief Engineer—Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202,

Indianapolis Union Railway, Mr. Larry L. Ratcliffe, Assistant General Manager Network Operations, Two Commerce Square, 14D, 2001 Market Street, P. O. Box 41414, Philadelphia, Pennsylvania 19101–1414.

Consolidated Rail Corporation (Conrail), CSX Transportation, Incorporated (CSX), and Indianapolis Union Railway (IU) jointly seek approval of the proposed discontinuance and removal of ''CP KD'' Interlocking, milepost 1.1 and the traffic control signal system between milepost 1.1 and 1.8, on Conrail's Zionsville Secondary Track, Indianapolis Division, near Indianapolis, Indiana. The proposed changes include removal of controlled interlocking signals 2E, 2W, 4E, 6N, and 6S; removal of automatic signal 1130E, installation of stop signs at the Conrail-IU crossing at grade, and re-designation of the Zionsville Secondary Track to an industrial track.

The reason given for the proposed changes is to retire facilities no longer required for present operations.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on August 22, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–21250 Filed 8–25–95; 8:45 am]

BILLING CODE 4910–06–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit ''Dutch and Flemish Cabinet Galleries and Adriaen Brouwer: Youth Making Faces'' (See list [1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC, from on or about September 24, 1995, through on or about February 11, 1996, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

[1] A copy of this list may be obtained by contacting Paul W. Manning, Assistant General Counsel, at 202/619–5997; the address is Room 700, U.S. Information Agency, 301–4th Street, SW., Washington, DC 20547.

Dated: August 23, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–21289 Filed 8–25–95; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition Determination; Notice

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit, ''John Singleton Copley in England'' (see list [1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition of the objects at the National Gallery of Art, Washington, DC, from on or about October 11, 1995, to on or about January 7, 1996, and, at the Museum of Fine Arts, Houston, TX, from on or about February 4, 1996, to on or about April 28, 1996, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: August 22, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–21216 Filed 8–25–95; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619–6084, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 60, No. 166
Monday, August 28, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

SECURITIES AND EXCHANGE COMMISSION

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 August 28, 1995.

A closed meeting will be held on Thursday, August 31, 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.

Chairman Levitt, 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 31, 1995, at 10:00 a.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Opinions.

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: August 23, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–21427 Filed 8–24–95; 3:04 pm]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1478)

TIME AND DATE: 10 a.m. (EDT), August 30, 1995.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on June 21, 1995.

Discussion Item

1. Rate review.

Action Items

New Business

C—Energy

C1. Supplements to Contract No. TV–92035V with CDI Power Systems Group, Inc., and Contract No. TV–92036V with GLI Technical Services for drafting services for Sequoyah Nuclear Plant.

C2. Supplement to Contract No. 90NLF–45264B–001 with Canus Corporation for services of instrument mechanics through December 31, 1995, for Sequoyah Nuclear Plant, including those expected to be used during the planned fall outage.

C3. Extension of existing rail transportation contract with CSX Transportation, Inc., for Widows Creek Fossil Plant.

E—Real Property

E1. Sale of noncommercial, nonexclusive permanent recreation easements affecting a total of 0.25 acre of Tellico Lake shoreline in Loudoun and Monroe Counties, Tennessee (Tract Nos. XTELR–166E and XTELR–168RE).

E2. Grant of permanent easement for an existing water line affecting 2.35 acres of land on Kentucky Lake in the Jonathan Creek Water District, Marshall County, Kentucky (Tract No. XTGIR–142U).

E3. Sale of permanent easement to Alltel Tennessee, Inc., affecting 0.06 acre of land in Anderson County, Tennessee, on Melton Hill Lake for the installation and maintenance of a buried telephone cable and associated equipment (Tract No. XMHR–56U).

Information Items

1. Grant of permanent recreational easement to the City of Knoxville affecting 9.2 acres of land on Fort Loudoun Lake (Tract No. XTFL–122RE) to be used by the city as part of its downtown waterfront development.

2. Interchange agreement with LG&E Power Marketing Inc., and delegation of authority to the Vice President, Transmission/Power Supply Group, or his designated representative, to execute the agreement.

3. Abandonment of a portion of the Norris-Alcoa transmission line right-of-way easement affecting 5.5 acres in Blount County, Tennessee (Tract No. NA–188), for development of a shopping center.

4. Experimental time-of-day rate arrangements for Glasgow Electric Plant Board, Glasgow, Kentucky, to allow Glasgow to test the cost-effectiveness of a bi-directional network for load control and remote meter reading purposes on the water heaters of up to 50 customers.

5. Sale of permanent recreation easement to Tullar Enterprises affecting 4 acres of Kentucky Reservoir land in Livingston County, Kentucky (Tract No. XGIR–923RE), and amendment to the reservoir plan on Kentucky Lake to allow for the development of a commercial recreational park.

6. Supplement to Personal Services Contract No. TV–76847T with Manpower Temporary Services.

7. Award of Contract No. 95S46–460040 to Steffner, Ltd., for the sale of two diesel generators and the provision of related services.

8. Award of a contract to Senior Engineering Company for main condenser tube bundle replacement modules for Sequoyah Nuclear Plant under Negotiation No. 4E–139450.

9. Amendments to the Rules and Regulations of the TVA Retirement System and the provisions of the TVA Savings and Deferral Retirement Plan (401(k) Plan).

10. Grant of permanent easement for a road affecting approximately 15.02 acres of land on Kentucky Lake, Humphreys County, Tennessee (Tract No. XTGIR–144H).

11. Public auction sale of 188 acres of land in Morgan County, Alabama; grant of permanent industrial easement to the Industrial Development Board of the City of Decatur, Alabama; and abandonment and amendment of certain easement rights and covenants.

12. Filing of condemnation cases.

FOR MORE INFORMATION: Please call TVA Public Relations at (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: August 23, 1995.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 95–21367 Filed 8–24–95; 3:04 pm]

BILLING CODE 8120–08–M

Corrections

Federal Register

Vol. 60, No. 166

Monday, August 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 DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 90-31; FAR Case 94-740; Item I]
RIN 9000-AG24

Federal Acquisition Regulation; Consolidation and Revision of the Authority To Examine Records

Correction

In rule document 95–19858 beginning on page 42649 in the issue of Wednesday, August 16, 1995, make the following correction:

52.214-26 [Corrected]

On page 42651, in the second column, in section 52.214-26, in the clause, in paragraph (d), after ''in'' insert ''paragraph (b) of this clause, for examination, audit, or''.

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 6

[FAC 90-31; FAR Case 94-701; Item II]
RIN 9000-AG39

Federal Acquisition Regulation; Contract Award Implementation

Correction

In rule document 95–19859 beginning on page 42652 in the issue of Wednesday, August 16, 1995, make the following correction:

6.302-3 [Corrected]

On page 42652, in the first column, in section 6.302-3(a)(2)(ii), in the second line, after ''research,'' insert ''or development capability to be provided by an educational''.

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 895 and 897

[Docket No. 94N-0078]

Medical Devices; Proposed Performance Standards for Electrode Lead Wires and Proposed Banning of Unprotected Electrode Lead Wires

Correction

In proposed rule document 95–15086 beginning on page 32406 in the issue of Wednesday, June 21, 1995, make the following correction:

On page 32415, in the first column, under **X. Request for Comments**, in the first paragraph, in the second line, ''September 21, 1995'' should read ''September 5, 1995''.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36081; File No. SR-Amex-95-30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Transaction Charges

Correction

In notice document 95–20208 beginning on page 42635 in the issue of Wednesday, August 16, 1995, make the following correction:

In the heading, the Release No. should have appeared as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-06; Notice 9]

RIN 2127-AF82

Federal Motor Vehicle Safety Standards, Passenger Car Brake Systems

Correction

In rule document 95–18106 beginning on page 37844 in the issue of Monday, July 24, 1995, make the following corrections:

§ 571.135 [Corrected]

On page 37847, in § 571.135, in the third column, ''≥'' should read ''≤'' in the following places:

1. In S7.5.2.(a) and (c), the second time it appears.

2. In S7.5.3.(a) and (b), in the second line.

3. In S7.6.2.(a) and (c), the second time it appears.

4. In S7.6.3.

5. In S7.7.3.(a) and (c), the second time it appears.

6. In S7.8.2.(a), the second time it appears.

On page 37848, in § 571.135, in the first column, ''≥'' should read ''≤'' in the following places:

1. In S7.9.2.(a), the second time it appears.

2. In S7.10.3.(a) and (c), the second time it appears.

BILLING CODE 1505–01–D

federal register

Monday
August 28, 1995

Part II

Department of Housing and Urban Development

Office of Policy Development and Research

Submission of Proposed Information Collection to OMB; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Policy Development and Research

[Docket No. FR–3917–N–18]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comment due date: September 12, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within 14 working days from the date of this notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone no. (202) 708–0050. This is not a toll free number.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB for processing an information collection package related to the National Survey of Homeless Assistance Providers and Clients (hereinafter ''survey''). HUD is requesting a review of this information collection on or before September 30, 1995.

The survey will provide estimates of the number and characteristics of service providers and an assessment of the types of programs and services available to people who are homeless. It will also provide detailed characteristics of persons using services. Under the auspices of the Interagency Council on the Homeless, the survey is being co-sponsored by 11 Federal agencies:

Department of Housing and Urban Development
Department of Health and Human Services
Department of Veterans Affairs
Department of Agriculture
Department of Commerce
Department of Education
Department of Energy
Department of Justice
Department of Transportation
Social Security Administration
Federal Emergency Management Agency

The survey includes two phases: Phase 1 is the collection of information on service providers and Phase 2 is the collection of information on service users (clients). In Phase 1, the Census Bureau will:

(1) Select a sample of geographic areas;

(2) Develop a comprehensive list of service providers in the survey sample areas;

(3) Collect basic information from all service providers within the sample areas on programs offered, via a computer-assisted telephone interview; and

(4) Select a subsample of providers and collect detailed information on programs and services by mail, with telephone followup.

Phase 1 of the national survey is planned to be conducted starting in October 1995 and conclude by January 1996.

In Phase 2, the Census Bureau will:

(1) Select a sample of service users (clients) within the sample areas;

(2) Select a sample of providers in designated programs; and

(3) Select clients and conduct personal visit interviews at selected service provider facilities.

Phase 2 of the survey is planned to be conducted starting in February 1996 and conclude by March 1996.

This request is for clearance to conduct Phase 2 of the survey, the collection of information on service users using two instruments:

- NSHAPC—200 Service Users Survey; and
- NSHAPC—300 Roster for Provider Facility.

The information to be requested under the Service Users Survey is specified, but the survey form will undergo a final forms design before it is administered.

A pre-test of the NSHAPC was conducted in April 1995 in three areas: Atlanta, GA; Pittsburgh, PA (including Allegheny, Fayette, Washington, and Westmoreland Counties); and the Armstrong County Community Action Agency Catchment area (a rural Community Action Agency service area outside Pittsburgh). The survey instruments have been revised to reflect the experience gained in the pre-test. The Census Bureau sought and obtained substantial expert input over a two-year period to develop the survey instruments.

The Department has submitted the proposal for the collection of information, as described below to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35):

(1) the title of the information collection proposal;

(2) the office of the agency to collect the information;

(3) the description of the need for the information and its proposed use;

(4) the agency form number, if applicable;

(5) what members of the public will be affected by the proposal;

(6) how frequently information submission will be required;

(7) an estimate of the total number of hours needed to prepare the information submission including numbers of respondents, frequency of response, and hours of response;

(8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 17, 1995.

Michael A. Stegman,

Assistant Secretary, Office of Policy Development and Research.

Notice of Submission of Proposed Information Collection to OMB

Proposal: National Survey of Homeless Assistance Providers and Clients (NSHAPC).

Office: Policy Development and Research.

Description of the Need for the Information and Its Proposed Use: This national survey would provide up-to-date information about the providers of homeless assistance and the characteristics of homeless persons who use services. The survey will be conducted in 76 areas including metropolitan and nonmetropolitan settings. The data will:

(1) be compared with the findings of a 1987 Urban Institute survey of homeless characteristics to understand reported changes in the nature of homelessness, especially those related to families with children;

(2) provide a basis for assessing local efforts to construct ''continuums of care'' for homeless people;

(3) be used to develop measures to assess the impact and performance of current homeless programs;

(4) will assist local governments and nonprofit organizations in designing more effective more effective local programs; and

(5) provide a baseline for examining the effects on the homeless population of proposed changes to the McKinney homeless assistance programs, and America's ''safety net'' programs for the poor (e.g., Section 8, AFDC, JTPA, and Medicaid programs).

Form Number: None.

Respondents: Homeless service providers and homeless persons.

Frequency of Submission: One-time.

Reporting Burden: See attachment.

Total Estimated Burden Hours: Phase 2, Client Surveys 2,850.

Status: New survey.

Contact: James E. Hoben, HUD, (202) 708–0574 X132; George A. Ferguson, HUD, (202) 708–1480; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: August 15, 1995.

Supporting Statement

A. Justification

1. Necessity of Information Collection

The National Survey of Homeless Assistance Providers and Clients (NSHAPC) includes two phases: the collection of information on service providers and the collection of information on service users (clients).

Phase 1: In Phase 1, the Census Bureau will:

(1) Select a sample of geographic areas.

(2) Develop a comprehensible list of service providers in the survey sample areas.

(3) Collect basic information from all service providers within the sample areas on programs offered, via a computer-assisted telephone interview.

(4) Select a subsample of providers and collect detailed information on programs and services by mail, with telephone follow-up.

Note: Steps 1 and 2 must be completed if Phase 2 is conducted.

Phase 2: In Phase 2, the Census Bureau will:

(1) Select a sample of service users (clients) within the sample areas in two other stages.

(2) Select a sample of providers in designated programs.

(3) Select clients and conduct personal visit interviews at selected service provider facilities.

This request is for clearance to conduct Phase 2 of the survey. An earlier OMB package was submitted requesting clearance to conduct Phase 1. This request is for the following forms listed by title and code number.

- NSHAPC–200A, Service User Questionnaire.
- NSHAPC–XXXX, Roster for Provider Facility.

The national survey will provide estimates of the number and characteristics of service providers, and an assessment of the types of programs and services available to people who are homeless. The survey will also provide (in Phase 2) detailed characteristics of persons using services. Phase 2 of the national survey is being sponsored by the following Federal agencies:

- Department of Health and Human Services (HHS).
- Department of Housing and Urban Development (HUD).
- Department of Veterans Affairs (VA).
- Department of Agriculture (USDA).
- Department of Commerce (DOC).
- Department of Education (ED).
- Department of Energy (DOE).
- Department of Justice (DOJ).
- Department of Transportation (DOT).
- Social Security Administration (SSA).
- Federal Emergency Management Agency (FEMA).

Data will be collected under HUD's data collections authority.

As part of the 1990 Census, the Census Bureau enumerated persons residing in homeless shelters and pre-identified street locations. However, this operation was not designed to provide the full range of information needed for guiding policy decisions related to homelessness. With this understanding, in September of 1993, the Bureau of the Census convened a conference of researchers, representatives of public interest groups, and government representatives to discuss ways of improving data collection on the homeless population. The consensus among this group was that the decennial census is not the appropriate vehicle for gathering information on the homeless population. They suggested that a new national survey using a updated methodologies to obtain an accurate and useful picture of those homeless people who use services in the United States is needed.

2. Needs and Uses

The information the new survey would provide is critical for developing the kinds of effective public policy responses needed to break the cycle of homelessness, both through targeted programs and the leveraging of mainstream resources. This survey would provide up-to-date information about the characteristics of today's homeless population who use services and would tell us how this population has changed since 1987 in urban areas. Included in the survey would be the first national examination of the characteristics of homelessness in rural America, fulfilling a Congressional mandate for a report on this subject.

The national NSHAPC survey would:

1. Provide national information on the types of services available to homeless persons in both urban and rural communities.

2. Provide information not addressed by the last national study in 1987 such as: What are the triggering events that precipitate homelessness? Where were homeless people living before they became homeless? How prevalent is AIDS among homeless persons? What impact does rural homelessness have on urban homelessness? What differences are there among homeless persons found in cities, suburbs, and rural areas?

3. Tell us what characteristics of the homeless population have changed since the 1987 study.

4. Collect additional information related to drug use, mental illness, AIDS, tuberculosis, and previous episodes of homelessness.

5. Include smaller cities, nonmetropolitan and rural areas in order to more accurately and fully reflect homelessness in the United States. The survey would interview a sufficient number of people using services in 76 geographic areas to ensure reliability of the national estimates. Of these 76 geographic areas, 28 would be large metropolitan areas, 24 would be medium and small metropolitan areas, and 24 would be nonmetropolitan areas (small cities and rural areas).

Discussion of Phase 1 Activities

Phase 1 will be on-going from October 1, 1995 through January 1996. Three steps occur in Phase 1.

Step 1: Completing the CATI Interview

1. Beginning on October 1, 1995, Census Bureau staff will use a computer-assisted telephone interview (CATI) to contact all service providers in the 76 sample communities. Service providers interviewed would include those with programs specifically targeted at the homeless (e.g. homeless shelters, soup kitchens, homeless outreach programs) as well as other community service providers with programs from which homeless individuals are eligible. The purpose of the survey of service providers would be to assess the types of programs and service available to homeless persons in

these metropolitan, suburban, and rural areas. All service providers in the areas will be asked about the types of programs offered and basic information about each program offered, such as source of funding, days of operation, and population group primarily served (e.g., veterans, people with mental illness). Prior to the CATI calls, an advance letter, NSHAPC—L(1)L will be mailed to each provider.

To develop the profile of programs offered nationwide, all service providers will be asked to complete the NSHAPC Form 100A, Service Provider Core Data Questionnaire. This questionnaire collects the following information about the service provider and programs offered at that address:

- Name.
- Contact for the facility.
- Address.
- Telephone Number.
- Type of Facility.
- Programs Provided.

The following information will be collected for each program offered:

- Average Number of Adults and Children Participating in Programs On A Daily Basis, and Percent Homeless.
- Average Number of Adults and Children the Facility Serves On A Daily Basis.
- Familial Status of Persons the Facility Serves On A Daily Basis.
- Public or private affiliation.
- Source of funding.
- If the program is targeted to a specific subpopulation group.
- Number of Facilities Under Contract To, or Accepting Vouchers.
- Expected Days of Operation for each program in February, 1996.
- Contact person for each program.

Step 2: Reviewing the List of Service Providers

Once the CATI interview is completed, service providers will be mailed a comprehensive list of service providers in the sample areas. Service providers are asked to review the list for completeness and accuracy. We are asking providers to correct any incorrect entries and to identify service providers that are omitted from the list. The updated lists will be mailed back to the Census Bureau for update. After receipt of the reviewed list, Census Bureau personnel will remove duplicate entries from the list and prepare a master list of service providers. New service providers added to the list will then be contacted and Census Bureau staff will administer the CATI interview.

The Census Bureau plans to generate listings of service providers for each of the sample areas in the survey and mail, NSHAPC Form 100–M, List of Providers Offering Homeless Programs and the NSHAPC—L(2) letter to all service providers shown on the comprehensive list and all knowledgeable local persons. The knowledgeable local persons and service providers will be asked to review the listing of all service providers in their area for completeness, and to add any missed service providers to the list. NOTE: A sample of providers will be asked to provide additional information about the services they offer. This is discussed below under Phase 1, Step 3.

The Census Bureau is obtaining copies of national files of service providers from national organizations, Federal agencies, and from Community Action Program (CAP) coordinators. The Census Bureau has obtained a copy of lists of service providers from the following Federal agencies: FEMA, Health and Human Services, Veterans Affairs, Housing and Urban Development, and Labor. National organizations, such as the National Coalition for the Homeless, National Alliance to End Homelessness, National Law Center on Homelessness and Poverty, National Network of Runaway and Youth Services, Catholic Charities, Better Homes Foundation, and Volunteers of America, Inc. have provided lists to the Census Bureau. The Census Bureau plans to unduplicate and merge these files into one comprehensive listing of service providers. This comprehensive list will be used as the initial sampling frame for identifying and interviewing service providers in the sample areas.

The local update may also provide the Census Bureau with additional names of service providers and local persons or organizations knowledgeable about homeless services. (Federal, State, and Local Agencies may not have the name of a service provider if the provider does not receive any federal, state, or local funding.

Census Bureau personnel also will contact the state homeless coordinator designated under the McKinney Homeless Assistance Act. The Census Bureau will tell them about the survey, indicate which counties in their state are included in the survey, and provide them with a list of service providers in each of the sample areas. The state coordinators will be asked to review the list of service providers and note any additions or changes.

Note: Census Bureau personnel have already completed some initial contacts with federal and state government offices, agencies, organizations, and knowledgeable local persons to begin compiling a national list of service providers.

Shelters for abused women and runaway youths will not be on the listings to be reviewed by service providers but are included in the sampling frame. This is to preserve the confidential locations of shelters for abused women and runaway youth.

The Census Bureau will use the master list of service providers as the frame to select the sample of service providers who will receive the detailed-program questionnaires and to select the sample of provider facilities where client interviewing will be conducted.

Step 3: Completing the Detailed Information on Programs and Services

Once the CATI interviews are completed, a subsample of service providers will be asked to provide more detailed information about the specific programs and services offered at their facility. Separate questionnaires for each program have been developed. Program managers will be asked to complete a questionnaire by mail for each program they administer. For each program offered, program managers will receive a copy of the appropriate program questionnaire and the NSHAPC L(3)L letter. Census Bureau staff will follow-up by telephone for all nonresponding providers.

Discussion of Phase 2 Activities

The second phase of the survey would consist of interviewing a sample of persons using services at homeless shelters, soup kitchens, and other service locations where homeless people are found. Respondents will be asked to complete NSHAPC Form 200A, Service User Questionnaire (See Attachment A). To facilitate the sampling, we are asking providers to complete Form NSHAPC 300, Roster for Providers (See Attachment B). Providers will be asked to list all clients using the housing program on the day of the interview. Interviews will take place continuously over a four-week period in order to obtain a representative sample. In addition to providing data on characteristics of the portion of the homeless population who use services, this phase of the survey would identify homeless subgroups and help determine their use of various types of assistance programs. It would also collect limited comparative data on housed persons with very low incomes who also rely on soup kitchens and other emergency assistance.

The survey will estimate characteristics at the national level only. The sample size is not large enough to produce estimates of client characteristics at the regional or local levels.

In 1987, the Urban Institute completed a survey of homeless persons. Data from the 1987 Urban Institute study represent the only national level data specific to homeless persons. Since the 1987 study, no significant national studies have been conducted to provide national information about the characteristics of homeless persons using services for homeless people.

NSHAPC data will be used to plan future programs and services funded via the McKinney Homeless Assistance Act and other homeless programs to prevent homelessness as well as ameliorate it. Understanding the causes of homelessness can help guide the development of preventive strategies. Data from the NSHAPC will be used by the participating agencies to prepare reports in accordance with the requirements of the McKinney Homeless Assistance Act and other homeless assistance programs.

The following targeted programs will benefit from the data collected in the NSHAPC.

Emergency/Temporary Shelter Assistance

Emergency Food and Shelter Program (FEMA)—Assistance directed toward temporary shelter
Emergency Shelter Grants Program (HUD)
Shelter for the Homeless [Department of Defense (DOD)]
Homeless Support Initiatives—Surplus Blankets (DOD)

Food and Nutrition Assistance

Commodities for Soup Kitchens (USDA)
Emergency Food and Shelter Program—Food Assistance (FEMA)
Commissary/Food Bank Initiatives (DOD) and [Department of Transportation (DOT)]
Federal Grain Inspection Service—Donation of Surplus Samples (USDA)

General Health Assistance

Health Care for the Homeless Grant Program (HHS)
Domiciliary Care for Homeless Veterans Program (VA)

Assistance to Homeless Persons With Disabilities

Projects for Assistance in Transition from Homelessness (PATH) (HHS)
Access to Community Care and Effective Services and Supports (ACCESS) (HHS)
Community Support Program—homeless-specific portion (HHS)
National Institute of Health (NIH) Research on Homeless (HHS)
Homeless Chronically Mentally Ill Veterans Program (VA)
Safe Havens (HUD)
National Institute of Alcohol Abuse and Alcoholism (NIAAA) Research Demonstration on Homelessness (HHS)
Drug Abuse Prevention for Runaway and Homeless Youth (HHS)

Education, Training, and Employment Assistance

Educ. Homeless Children & Youth State Grants Prog. (ED)
Exemplary Projects Program—Homeless Children (ED)
Adult Education for the Homeless (ED)
Job Training for the Homeless Demonstration Program (DOL)
Homeless Veterans Reintegration Project (DOL)

Housing Assistance

Transitional Housing Demonstration Program (HHS)
Supportive Housing Demonstration (HUD)
Section 87 Assistance for SROs (HUD)
Single Family Property Disposition Initiatives (HUD)
Transitional Living Program for Homeless Youth (HHS)
Farmer's Home Administration (FMHA) Homes for the Homeless (USDA)
Shelter for Homeless Vets—Acquired Property Sales (VA)
Base Closure Properties (DOD, HUD)

Homeless Prevention

Emergency Food and Shelter Program (FEMA)—Prevention Assistance
Emergency Community Services Homeless Grant Program (HHS)

General/Misc. Aid to Homeless Providers

Emergency Community Services Homeless Grant Program (HHS)
Excess and Surplus Federal Real Property [General Services Administration (GSA)/(HUD)/(HHS)]
Runaway and Homeless Youth Program (HHS)

Programs for Homeless Children/Youth/Families

Family Support Centers (HHS)
Transitional Housing Demonstration Program (HHS)
Supportive Housing Demonstration (HUD)
Educ. for Homeless Children and Youth State Grants Program (ED)
Exemplary Projects Program—Homeless Children (ED)
Runaway and Homeless Youth Program (HHS)
Transitional Living Program for Homeless Youth (HHS)
Drug Abuse Prevention for Runaway and Homeless Youth (HHS)

Programs for Homeless Veterans

Domiciliary Care for Homeless Veterans Program (VA)
Homeless Chronically Mentally Ill Veterans Program (VA)
Shelter for Homeless Vets—Acquired Property Sales (VA)
Homeless Veterans Reintegration Project (DOL)

Each agency was asked to identify their data needs and to rank the importance of those data requirements. From this ranking, we developed the Service User Questionnaire, NSHAPC—Form 200A. Listed below is a discussion of the survey questions on the Respondent Questionnaire and how the data will be used by HUD, HHS, VA, USDA and the other Federal agencies. Section numbers correspond to the section numbers on the questionnaire.

Service User Questionnaire Cover Page—Items N and O—on the cover page asks the respondent's name and age. Collection of the name (along with the other variables described in Section 4) will be used to eliminate duplicate interviews. Because the sampling and data collection design calls for multiple visits to each provider site, and because one homeless person could be found in more than one sampling frame (e.g., in both soup kitchens and shelters), unduplicating is central to the process of estimating the size of the population.

Question 64a asks for the respondent's social security number. Question 64b asks for the first five digits of the respondent's social security number if the respondent refuses to give their entire social security number. These questions, along with the name and the other variables described above, are being collected for purposes of unduplicating respondents.

Section 1: Current Living Condition

Questions 1a–7

These questions determine whether or not the respondent is homeless, and are considered essential by all participating agencies. With minor modifications, they are the same screening questions used in Rossi's (1986) Chicago studies, in the National Institute on Drug Abuse (NIDA, 1992) Washington, D.C. Metropolitan Area Drug Study (DC*MADS), and in the Urban Institute's national study (Burt and Cohen, 1988, 1989) which the NSHAPC methodology is designed to parallel and extend. For purposes of continuity and comparison, it is important that they remain essentially the same as they were in earlier studies.

Section 2: Without Permanent Housing

Section 3: Currently With Permanent Housing

Section 2, Questions 8a–10, 24–27

Section 3, Questions 33a–40

The answers to these questions are necessary to make estimates of the size of the homeless population. Sampling and estimation experts from the Urban Institute and the Census Bureau developed the questions. Questions 8 and 9 parallel similar questions asked in the 1987 Urban Institute study.

The Census Bureau requires Question 33B to determine if asking respondents to report names of shelters can be used to assess the completeness of the survey's list of shelters.

Section 2, Questions 11–23, 28–32

Section 3, Questions 41–55

These questions are needed to understand the circumstances affecting the respondent in the period immediately before becoming homeless. They have been compiled from similar questions asked in the 1987 Urban Institute study, the DC*MADS study, and other studies. These previously used questions were augmented by questions or item content which pretests revealed to be necessary to give a reasonable understanding of the respondent's experiences. They will reveal the proximate causes of each individual's current homeless episode (or their last homeless episode if they are not now homeless but have been homeless in the past).

HHS considers these questions to be essential and the VA considers them highly desirable. Other agencies whose mission includes efforts to prevent homelessness as well as ameliorate it may also consider them desirable. An understanding of proximate causes can help guide the development of preventive strategies.

Section 2, Questions 11–15

Section 3, Questions 41–44

These questions are either identical to or minor modifications of questions asked in the 1987 Urban Institute study. We modified the wording of some questions to make sure that the respondent and the researcher mean the same thing by their answers (e.g., on Question 13, some women living with their children will say they live alone, because they do not live with a spouse or boyfriend. We want to be sure that ''alone'' means ''alone.'')

Section 2, Questions 16 a and b

Section 3, Questions 45 a and b

These questions are modified versions of a question asked in the 1987 Urban Institute study. We changed the format from obtaining only a single response to probing for all relevant responses and then asking the respondent to identify the primary reason. This eliminates the difficulty in interpreting single responses such as Respondent 1 saying ''couldn't pay the rent,'' Respondent 2 saying ''lost my job,'' and Respondent 3 saying ''Was doing drugs,'' when all three could not pay the rent because they lost their jobs because they were doing drugs.

Section 2, Questions 17–19

Section 3, Questions 46–47c

These questions were not in the 1987 Urban Institute study.

Subsequent research by NIDA (1992) indicates that many homeless people spend a considerable amount of time in institutions or in temporary arrangements with friends or family between the interview date and the time when they last had a permanent place to stay (Question 11). In other words, they are not literally homeless during the whole period since they last had a permanent place to stay. The answers to these questions will let us determine how much of the time they were literally homeless.

Section 2, Question 20

We want this question included to learn whether respondents have any experience in the housing market on their own. Never having been a primary tenant has been shown (Weitzman, 1989) to differentiate homeless from never-homeless families.

Section 2, Questions 21–23

Section 3, Questions 48–50

HHS requested these questions. Local studies (Piliavin, Sosin, and Westerfelt, 1986; Sosin, Colson and Grossman, 1988) have shown seriously elevated rates of childhood experiences in foster care among the adult homeless. The answers to these questions will help identify the prevalence of childhood out-of-home placement and runaway behavior among the adult homeless population for the first time on a national sample. High prevalence could indicate a preventive role in programs within HHS responsibility.

Section 2, Questions 28–32

Section 3, Questions 51–55

These questions are of interest to Department of Agriculture—Farmers Home Administration (FmHA), FEMA, and HHS' Health Care for the Homeless program—the federal agencies supporting emergency services. Answers to these questions will provide some explanation of the movement of homeless people from one type of community to another, such as the push of no services or no jobs in the community left behind and the pull of expected services and economic opportunities in the community where respondents are interviewed. They will also help identify the conditions that generate homelessness, which may not be the same conditions as those in the community where homeless people are interviewed.

Section 4: Demographics

Questions 56–64a

All the sponsoring agencies consider basic demographic questions which describe the population to be essential. In addition, Question 60 may help explain a lack of participation in the labor force at the time of the interview, and Questions 61a, 61b, 62a and 62b provide data about possible educational difficulties and deficits in addition to the simple fact of ''last grade completed.'' They may help define possible prevention strategies.

Questions 58, 64, and 64a

Questions 58 asks for the respondent's date of birth. The date of birth serves a very important purpose of eliminating duplicate interviews. A unique identifier is created using the respondent's date of birth, gender, and one or two other variables. The data set is then searched for duplicates. Because the sampling and data collection design calls for multiple visits to each provider site, and because one homeless person could be found in more than one sample frame (e.g., in both soup kitchens and shelters), unduplicating is central to the process of estimating the size of the population.

Question 64a asks for the respondent's social security number. Question 64b asks for the first five digits of the respondent's social security number if they refuse to give their entire Social Security Number in response to question 64a. These are being collected as one of the other unduplicating variables. The Bureau of the Census, HHS, and the other sponsoring agencies will hold this information in the strictest of confidence and will ensure it is available only to researchers at HHS, the other sponsoring agencies and Bureau of the Census staff.

Section 5: Children and Education

Questions 65–71h

ED and HHS consider these questions to be essential. Answers to this set of questions will show the degree to which homelessness has split families, and which children have been separated from their parent(s). This information is important for planning reunification, housing, and other needs of homeless families.

The information is of primary interest to ED, and the questions about school attendance and barriers are directly relevant to ED's agency mission under the McKinney Act and Congressional directives to gather this information and report it to Congress.

Questions 71b and 71d

We added the pre-school content of these questions for children ages 3–5 at the specific request of HHS. ED requested the other content of these questions.

Questions 71g, 71h

We added the questions about day care at the specific request of HHS.

Question 72

All participating agencies consider this question, on the composition of homeless households to be essential.

Question 73

HHS specifically requested that this question be included on the questionnaire. A pregnancy experienced by a precariously housed woman has been shown to make her more vulnerable to literal homelessness (Weitzman, 1989).

Section 6: Employment

Questions 74–79

HHS considers these questions to be essential, and the VA considers them desirable. Where the Bureau of Labor Statistics (BLS) routinely asks questions with appropriate content in its national surveys, we adopted the BLS working for this survey so answers for the homeless can be compared with nationally representative data.

Section 7: Sources of Income and Service Use

Questions 80–84

HHS considers all questions in this section to be essential. VA also considers Question 80 essential. These questions describe receipt of benefits, other income sources, and total income for the month before the interview. They also describe respondent experiences with a variety of HHS, USDA, and local government benefits, including any change of benefits that might have played a role in the respondent becoming homeless.

Section 8: Veteran Status

Questions 85–89

The VA submitted these questions and considers them essential. In particular, they have no other national source of data in war zone or combat exposure (Questions 87 and 88), which may play a critical role in the need for services as an antecedent of homelessness.

Section 9: Food Intake

Questions 90–93

These questions are considered essential by HHS and USDA.

Questions 94a–95b

The Census Bureau needs these questions to estimate the proportion of persons receiving food that are poor but housed and those who are homeless.

The Census Bureau requires Question 95b to determine if asking respondents to report names of soup kitchens can be used to assess the completeness of the survey's list of soup kitchens.

Section 10: Current Physical Health

Question 96

HHS and VA consider this item essential.

Questions 97–117

HHS considers questions 97–107 to be essential. For many questions, the set of items to be asked about were specified by agency personnel (e.g., specific health conditions for Question 96, specific service sites for Question 99; all of Questions 101 and 103).

The VA needs information about the use of VA facilities. The VA considers the VA-relevant information in Question 99 essential, as it will assist them in determining whether veterans are using other medical facilities to the exclusion of, or in addition to, VA facilities.

Section 11: Victimization and Imprisonment

Questions 118a–120c

HHS, ED and VA requested that these questions be included on the questionnaire. Several divisions of HHS specifically requested all of the components of Question 120, and question 118c (juvenile detention). A great deal of evidence suggests that parental neglect and abuse (asked about in Questions 120a–c) is implicated in runaway behavior and youth homelessness (Robertson, 1991). It is also obviously a precursor of childhood out-of-home placement, which in turn is associated with both youth and adult homelessness. (Piliavin, Sosin and Westerfelt, 1986; Sosin, Colson and Grossman, 1988). The answers to these questions will reveal the degree to which the present homeless population has these experiences in their background as potential contributing factors to their homelessness.

Section 12: Mental Health

Questions 121a–126c

HHS considers these questions essential. The remaining agencies completing the ratings considered them highly desirable. Given the evidence for serious mental illness among sizable proportions of the homeless population, these questions will provide data to understand how mental illness relates to the many other factors included in the interview protocol, including use of services and benefit receipt.

Questions 121a–124

Questions 121a–124 are taken directly from the Psychiatric section of the Addiction Severity Index (ASI), an instrument developed by NIAAA to assess addictions and related conditions. These questions form a scale; answers are summed to form a score, which can be compared to national norms for this segment of the ASI. The ability to compare homeless people's responses to a national norm will let us determine where homeless people fit on the continuum of mental health problems. All items in Questions 121a–124 must be present to construct the scale score.

Questions 125–126c

Questions 125–126c are also taken from the ASI, with minor modifications as accepted by NIMH's Program for the Homeless Mentally Ill. They give evidence of treatment patterns (or lack thereof), and will supply NIMH with an estimate of unmet service need, as well as the usual sources of care sought by the homeless mentally ill.

Section 13: Chemical Dependency

Questions 127a–150

HHS considers these questions essential. The remaining agencies completing the ratings consider them highly desirable. Given the evidence for substance abuse among sizable proportions of the homeless population, these questions will provide data to understand how alcoholism and drug abuse relate to the many other factors included in the interview protocol—especially antecedents of homelessness.

Questions 127a–132, 142–144

Questions 127a–132 and 142–144 are taken directly from the Addiction Severity Index (ASI, McLellan et al., 1991, see above). These questions form several scales; answers are summed to form scores, which can be compared to national norms and norms for treatment populations for this segment of the ASI. The ability to compare homeless people's responses to national norms and norms for treatment populations will let us determine where homeless people fit on the continuum of chemical dependency problems. All items in Questions 127a–132 and 142–144 must be present to construct the scale score, and NIAAA has strongly expressed an interest in seeing the scales included in their entirety on this interview protocol.

Questions 135–139, 147–150

Questions 135–139 (for alcohol treatment) and 147–150 (for drug treatment) are also taken from the ASI, with minor modifications as accepted by NIAAA/NIDA. They give evidence of treatment patterns (or lack thereof), and will supply NIMH with an estimate of unmet service need, as well as the usual sources of care sought by homeless substance abusers.

Questions 133, 144

The items in these questions are taken from the Short Michigan Alcoholism Screening Test (Question 122—Selzer, Vinokur, and van Rooijen, 1975) and the Drug Abuse Screening Test (Question 132—Skinner, 1982). Both of the original instruments are too long to include in this study in their entirety (24 and 28 items, respectively). However, the inclusion of some measure of symptomatology related to substance abuse was felt to be important, to detect the level of functional impairment related to substance abuse among those who never sought treatment as well as among those who have. In each case the eight items selected are those with the highest correlations with the total scale score for the original scale (r=.7 or higher). Scores based on these selected items should function in virtually the same way as scores we would obtain if we used all of each instrument.

Questions 134, 145

These questions assess the respondent's age when heavy alcohol or drug use began. We are including these questions to assure that we will know the duration of the respondents' substance abuse problems. Answers to these questions augment the information on the earliest and most recent treatment, and will provide a more complete picture of the respondents' involvement with alcohol and drugs.

Question 151

This question is asked so that respondents can provide their general impressions on the availability and quality of services in their community.

3. Efforts to Minimize Burden

Not applicable. Respondents are individuals at service sites who cannot respond with computer tapes or disks. We are also minimizing the burden of the FEMA Local Board Contact Persons, government contacts, service providers and knowledgeable local persons by giving them the combined listing of service providers to review as opposed to asking them to list all service providers in their area.

4. Efforts to Identify Duplication, and Use of Available Information

HUD consulted with other government agencies and outside experts and determined that the proposed national NSHAPC will be the only current, national data source with detailed information on the types and availability of programs and services offered and on the characteristics of literally homeless persons who use services. The most recent national data is the 1987 Urban Institute Study.

In March 1987, the Urban Institute conducted a survey of homeless persons who used services in cities of 100,000 or more. The NSHAPC is intended to parallel and extend the methodology used by the Urban Institute in the 1987 survey to capture a higher proportion of the literally homeless population who use services.

a. The NSHAPC will include additional geographical coverage. Cities with populations of 100,000 or less and areas outside of cities will be included in the survey sample. (The 1987 Urban Institute survey only included cities with populations over 100,000.)

b. The NSHAPC will include additional topic coverage. The client questionnaire covers more topics and in greater depth than was covered in the 1987 Urban Institute Survey. There are also some questions similar to those in the 1987 survey so that a comparison may be made between the results of the two surveys. (The 1987 Urban Institute survey only asked about drug treatment. The NSHAPC asks about drug treatment, as well as, types and frequencies of drugs used, and information about mental health.)

c. The interview period for client interviews for the national survey will be one month. The interview period for the Urban Institute's 1987 survey was one week.

While the results from the Urban Institute's 1987 survey provide characteristics of homeless persons who used services, it does not include the NSHAPC's additional emphasis on geographical and topic coverage as described in A.4. The 1987 study did not provide any information on the types of programs and services offered. The Urban Institute survey is also almost 10 years old. More recent information is needed. Thus, there is no similar information available that could be used or modified for use for the purposes described.

5. Minimizing Burden on Small Businesses

The Census Bureau plans on using the combined files from Federal agencies and national organizations and advocacy groups to generate listings of service providers for each sample area in the survey and mail the listings to all service providers contacted by telephone and all knowledgeable local persons. The knowledgeable local persons and service providers will be asked to review the listing for completeness of all service providers in their area and to add any missed service providers to the list. The state homeless coordinator will only be asked to review the listing of service provider (Form NSHAPC 100M). The Census Bureau believes the file will provide an initial comprehensive listing of service providers currently offering services to the homeless thus reducing the burden of the service providers, government contacts, and knowledgeable local persons. No small businesses will be contacted.

6. Consequences of Less Frequent Collection

Not applicable. This is a one-time survey. Phase 1 will be conducted from October 2, 1995 to January 15, 1996, and Phase 2 from January 21 to March 30, 1996.

7. Consistency With 5 CFR 1320.6

The Census Bureau will collect these data in a manner consistent with the guideline in 5 CFR 1320.6.

8. Consultations Outside the Agency

Consultations have been made with the following people:

Dr. Martha, Burt, The Urban Institute, 2100 M Street, NW., Washington, DC 20037, Tel: (202) 857–8551

Ms. Lorraine Reilly (formerly of), The Urban Institute, 2100 M Street, NW., Washington, DC 20037, Tel: (202) 857–8551

Dr. Michael Dennis, Research Triangle Institute, Center for Social Research and

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Dr. Greg Owen, Wilder Foundation, Wilder Research Center, 1295 Bandana Blvd., North—Suite 210, St. Paul, MN 55108–5197, Tel: (612) 647–4612

Ms. Joanne Wiggens, U.S. Dept. of Education, 600 Independence Avenue, SW—Room 4143, Washington, DC 20202, Tel: (202) 401–1958

Mr. Tom Fagen, U.S. Dept. of Education, 400 Maryland Avenue, SW—Room 2043, Washington, DC 20202, Tel: (202) 401–1682

Mr. John Pentecost, USDA—FmHA, Room 5345—South, MFHD—PD, Washington, DC 20250, Tel: (202) 720–8983

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Ms. Denise Smith, Special Places/Group Quarters Team, Office of the Assistant Division Chief, Population Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–2378

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Mr. David Hubble, Victimization and Expenditure Branch, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–4239

Ms. Marjorie Dauphin, Victimization and Expenditure Branch, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–4190

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Mr. David Hornick, Victimization and Expenditure Branch, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–4190

Mr. John Bushery, Quality Assurance and Evaluation Branch, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–1915

Ms. Andrea Meier, Quality Assurance and Evaluation Branch, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–1983

Mr. Michael McMahon, Field Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–4901

Mr. Chester Bowie, Demographic Surveys Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–3773

Mr. Steven Tourkin, Methods, Procedures and Quality Control Branch, Demographic Surveys Division, Bureau of the Census, Washington, DC 20233, Tel: (301) 457–3791

Ms. Jacquie Lawing, Deputy Assistant Secretary for Economic Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Suite 7204, Washington, DC 20410, Tel: (202) 708–2070

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Mr. Mike Roanhouse, Office of Special Needs Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW, Suite 7258, Washington, DC 20410, Tel: (202) 708–1234

Mr. James Hoben, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, Tel: (202) 708–0574

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Mr. Gerald Britten (formerly of), Deputy Assistant Secretary for Program Systems, Department of Health and Human Services, 200 Independence Avenue, SW., Room 447D, Washington, DC 20201, Tel: (202) 690–8774

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Mr. Fred Osher (formerly of), Office of Programs for the Homeless Mentally Ill, National Institute of Mental Health, Dept. of Health and Human Services, Parklawn Bldg., Room 3C06, 5600 Fishers Lane, Rockville, MD 20857, Tel: (301) 443–3706

Mr. Walter Leginski, Homeless Programs Branch, Center for Mental Health Services, Parklawn Building, room 11c–05, Rockville, MD 20857

Dr. Robert Huebner, Ph.D., Health Services Research Branch, National Institute of Alcohol Abuse and Alcoholism, Dept. of Health and Human Services, Willow Building, Suite 505, 600 Executive Boulevard, Rockville, MD. 20892–7003, Tel: (301) 443–0786

Mr. Steve Bartolomei-Hill, Human Service Policy, Office of the Assistant Secretary for Planning and Evaluation, Dept. of Health and Human Services, Hubert H. Humphrey Bldg., Room 410E, 200 Independence Avenue, SW., Washington, DC 20201, Tel: (202) 690–7148

Ms. Rhoda Davis, Office of Supplemental Security Income, Dept. of Health and Human Services, Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Tel: (410) 965–6210

Ms. Terry Lewis, Administration on Children, Youth, and Families, Administration for Children and Families, Dept. of Health and Human Services, Mary E. Switzer Bldg., Room 2426, 330 C Street, SW., Washington, DC 20201, Tel: (202) 205–8051

Dr. Joan Turek Brezina, Ph.D., Program Systems, Office of the Assistant Secretary for Planning and Evaluation, Dept. of Health and Human Services, Hubert H. Humphrey Bldg., Room 444F, 200 Independence Avenue, SW., Washington, DC 20201, Tel: (202) 690–6141

Mr. Mike Jewell (formerly of), Office of the Assistant Secretary for Planning and Evaluation, Dept. of Health and Human Services, Hubert H. Humphrey Bldg—Room 447D, 200 Independence Avenue, SW., Washington, DC 20201, Tel: (202) 690–7316

Ms. Peg Washnitzer, Office of Community Services, Administration for Children and Families, Dept. of Health and Human Services, Aerospace Bldg., 7th Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, Tel: (202) 401–2333

Mr. Richard Chambers, Division of Intergovernmental Affairs, Health Care Financing Administration, Dept. of Health and Human Services, Hubert H. Humphrey Bldg., Room 410B, 200 Independence Avenue, SW., Washington, DC 20201, Tel: (202) 690–6257

Ms. Joan Holloway, Health Resources and Services Administration, Public Health Services, Dept. of Health and Human Services, Parklawn Bldg., Room 9–12, 5600 Fishers Lane, Rockville, MD 20857, Tel: (301) 443–8134

Ms. Marsha A. Martin (formerly of), Executive Director, Interagency Council on the Homeless, 457 Seventh Street, NW., Washington, DC, Tel: (202) 708–1480

Mr. George Ferguson, Interagency Council on the Homeless, 457 Seventh Street, NW., Washington, DC, Tel: (202) 708–1480
Ms. Della Hughes, National Network of Runaway and Youth Services, 1319 F Street, N.W., Suite 401, Washington, DC 20004, Tel: (202) 783–7949
Ms. Vera Johnson, SASHA Bruce Center Runaway Shelter, 1022 Maryland Avenue, NE., Washington, DC 20002, Tel: (202) 675–9340

As a result of these consultations, all issues were resolved.

9. Assurance of Confidentiality

The provisions of the Privacy Act of 1974 (5 USC 552a) assure the confidentiality of the data from this survey.

During Phase 2 of the national survey, the field representatives will inform all service providers and respondents verbally of the confidentiality of their responses and the voluntary nature of the NSHAPC along with other information required by the Privacy Act of 1974 at the time of initial contact. As can be seen on the NSHAPC questionnaire cover sheets (Attachment A), a statement of confidentiality assurance is printed at the top of the form. Careful procedures are followed by the Bureau of the Census to assure privacy during the interview, and to protect the confidentiality of materials generated during the course of the interview. Every Bureau of the Census employee takes an oath and is subject to a jail sentence and a fine for improperly disclosing any information that would identify an individual or household. All field representatives are trained to interview respondents in private. All questionnaires associated with the NSHAPC national survey will be kept under secured conditions by the Bureau of the Census.

10. Justification for Sensitive Questions

The NSHAPC 200(A) questionnaire has the following sensitive questions:

Section 9—Question 94

Question 94 asks respondents how they get their food and where they eat. The field representatives will read the response categories to the respondent. One of the possible answers is ''trash cans''. When planning services to feed the homeless population, it is critical to understand where they get their food. We need to know the number of persons who eat from trash cans.

Section 10—Question 96

Question 96 asks respondents about their medical condition. The field representatives will read the response categories to the respondent. Possible responses include ''test positive for ''HIV'', ''have AIDS'', and ''use drugs intravenously''. There is increasing concern about the number of homeless persons with these conditions. Information about these, and other conditions, is essential when planning health care services for the homeless.

Section 11—Questions 119 c and d and 120 a–c

These questions ask about parental neglect and abuse. A great deal of evidence suggest that parental neglect and abuse asked about in questions 120a–c is implicated in runaway behavior and youth homelessness. The answers to these questions will reveal the degree to which the present homeless population has these experiences in their background as potential contributing factors to their homelessness.

11. Cost

The total estimated cost for Phase 1 of the national survey is $1,950,000. Cost for Phase 1, Steps 1 and 2 is $1,500,000. Cost to collect detailed program and service level data (Step 3) is $450,000. We compiled this estimate using individual estimates developed within each Census Bureau division involved in this survey. Estimates are based on the size of the sample and the length of the questionnaires. Administrative overheads, design, printing, and mailing costs are included.

The total estimated cost for Phase 2 is $2,200,000. The only cost to the service providers and the service users (clients) is the time it takes to complete the questionnaire.

12. Estimate of Respondent Burden

We estimate the average time to complete the NSHAPC–200A, Service User Questionnaire to be 45 minutes. These estimates are based on in-house testing and out-house testing of the questionnaire by the Census Bureau. This is a total of 2,850 hours.

13. Reason for Change in Burden

Not Applicable. This is a new survey. There are, therefore, 0 hours in the current OMB inventory.

14. Project Schedule

Beginning on October 1, 1995, the Census Bureau plans on telephoning all service providers within sample areas to collect basic information about programs offered. After the phone calls are completed, the Census Bureau will mail the listings of service providers by sample area and the NSHAPC—L(2)L letter to providers contacted by telephone. A subsample of providers will also be asked to provide more detailed information about the services they offer. After conducting the CATI interviews, the Census Bureau will mail the appropriate questionnaires, NSHAPC Form 100B to 100L, to the providers in sample.

Census Bureau personnel also will contact individuals from federal and state governments, agencies, organizations and knowledgeable local persons and ask them to review the lists of service providers. The Census Bureau will conduct these operations during October 1995 to January 1996.

B. Collection of Information Employing Statistical Methods

1. Universe and Respondent Selection

The Census Bureau will conduct the national survey in 76 primary sampling areas. The Census Bureau will interview all service providers in the sample areas to collect basic information about the programs offered. This is a total of 25,000 interviews. The Census Bureau will select a subsample of providers within those areas and conduct detailed mail interviews for the programs and services offered by the provider. This is a total of 5,000 providers.

Phase 1 of the survey will provide information on the types of programs and services available to homeless people. Phase 2 of the survey will provide estimates and detailed characteristics about homeless service users, including the literally homeless. Most research to date has been conducted in urban and suburban areas. For such areas, there is a growing consensus among researchers that a service-based survey design with sampling over time (vs one-time sampling) will give a good representation of the homeless population. For nonmetropolitan areas, the consensus is that an expansion of the types of service providers is needed to cover the homeless adequately. The Department of Agriculture asked us to increase the number of sample areas and the Census Bureau identified ways to design the survey to produce reasonably precise estimates of rural homelessness. However, it should be noted that the procedures for measuring rural homelessness will be less sophisticated than our procedures in urban areas. There is much to learn about rural areas and the NSHAPC is an excellent opportunity to collect information about rural homelessness. In the nonmetropolitan areas the sampling frame is the set of Community Assistance Program (CAP) ''Catchment Areas'', wherever they exist. CAP catchment areas are counties or local areas grouped together to receive

funding and provide services to the needy and are served by a CAP agency. Our preliminary research indicates that CAP agencies are a good source for lists of services in the nonmetropolitan areas they cover. In a few nonmetropolitan areas where CAPs do not exist, the sampling frame is the set of counties or groups of counties.

2. Procedures for Collecting Information

Sampled Service Providers

The Census Bureau will conduct the survey in 76 sample areas; this is the first stage of sampling. Within each sample area, a comprehensive list of service providers will be developed. All providers will furnish basic, core information on programs offered. Phase 1 also includes a second stage of sampling where a subset of service providers will be selected within each sample area to be asked more detailed information about their programs and services.

Sample of Clients (Service Users)

In Phase 2, a sample of clients will be selected for interviewing. To facilitate the sampling, we are asking providers to complete Form NSHAPC **, Roster for Provider Facility. This form will help ensure all clients at the housing programs are listed. This is a three-stage sample, where the first-stage sample corresponds to the same 76 geographic areas discussed above for the provider-interview sample. In the second stage, a sample of providers will be selected in each sample area but only in designated programs. In the third stage, a sample of the clients at each of the sample provider facilities will be selected.

Estimation

In Phase 1, the estimates needed for proportions of providers falling in different categories.

The estimates needed from Phase 2 consist of proportions of clients falling in different categories. The base for these proportions can be derived in two ways:

a. Weighted estimates of the average number of persons using services on any given day in February;

b. Weighted estimates of the total number of persons using services at any time during February.

Other estimates can be derived from these. For example, the weights applied to obtain estimates (a) or (b) could be used for estimates only of those service-using persons who are homeless according to different definitions of homelessness. For the national survey, it is likely that we will give a range of estimates, corresponding to different assumptions about coverage and multiplicity biases.

The weights for (a) will be standard survey weights based on the selection probability, with adjustments for nonresponse. There will be a ''multiplicity'' adjustment to reduce the relative weight of people who have more than one chance of selection because they use more than one type of program, for example, both shelters and soup kitchens, as determined from the questionnaire.

For (b) we are considering three estimation methods. One purpose of the pretest was to get information to evaluate these methods.

Method 1: *The weight will be proportional to the number of consecutive days prior to the interview (up to 28 days) that the person did not use a shelter (for the shelter sample) or soup kitchen (for the soup kitchen sample), and likewise for other types of programs.* For example, a person who says this is their first night in any shelter in the last 28 days will be given a weight 28 times the typical weight of a person who was in a shelter the night before. (Intuitively, the method assumes that for every person we find who is just entering homelessness, there are 27 others whom we miss because we did not happen to interview them on their first day.) There is a precise mathematical justification for the method as giving an unbiased estimate of the total number of service users during 28-day periods centered around February, making some assumptions that overall patterns of service use are fairly constant throughout the month.

This is intended to be our primary method. The potential drawback of this method would be if the pretest finds too many people who are just starting to use services after a long absence, resulting in too many large weights. Limited research from 1990 census evaluation projects suggests that this should not be a problem. However, if this turns out to be a problem we would either use the Method 2 or use Method 1 with a 7-day ''window'' instead of a 28-day ''window''.

Method 2: *The weight will be inversely proportional to the number of days in the last week the client used a shelter (for the shelter sample) or soup kitchen (for the soup kitchen sample), and likewise for other types of programs.* This is the procedure used in the 1987 Urban Institute study. We will ask this question for comparability with that survey. This approach has two disadvantages. First, even if the questions are answered accurately, the method has a mathematical bias unless each person has the same pattern of service use each week. Second, it is not reasonable to ask a person for his/her average shelter use for an entire month, so the method cannot give direct estimates for the total number using services during a period longer than a week.

Method 3: *Capture-recapture.* We are not using capture-recapture estimation. It would require selecting the sample independently each day, so that there would be a chance that a person or small shelter might come into sample numerous times.

The Urban Institute and the Census Bureau developed the survey design. As part of Joint Statistical Agreements between the Urban Institute and the Census Bureau, the following operational papers were developed. Each are available from the Census Bureau of request.

Joint Statistical Agreement 91–30

—Developing a Provider List—November 27, 1991
—Methodological Issues and Options—November 27, 1991
—Options for Evaluating Coverage in Urban Areas—December 10, 1991
—Ranking of Data Items by Federal Agencies—December 10, 1991

Joint Statistical Agreement 92–01

—Draft Questionnaire and Agency Data Needs—March 26, 1992
—Developing Provider Lists for a National Homeless Survey—March 26, 1992
—Proposed Methodology for a National Homeless Survey—March 26, 1992
—Questions for Unduplicating and for Estimating a Month-Long Point Prevalence and Annual Prevalence—March 26, 1992
—Developing Estimates of the Number of Service Providers in Different Strata—April 10, 1992
—Options for Evaluating Survey Coverage in Urban Areas, and Preliminary
—Information on Rural Areas—April 10, 1992

Joint Statistical Agreement 92–04

—Mechanics of List Development and Additional Field and Survey Procedures—August 14, 1992
—Estimates of Service Providers and Users in Non-MSA Areas, and Options for
—Evaluating Survey Coverage in These Areas—August 4, 1992

3. Method to Maximize Response

a. Survey Frame for Client Interviews

New research indicates the greatest improvement in coverage of the homeless population is through

sampling this population over time. (e.q., soup kitchens and shelters) and outreach programs during a four-week period. The NSHAPC survey design uses a service-based methodology. A ''service user'' is anyone who uses generic services or shelters, soup kitchens, or other services for the homelsss. The survey frame will include shelters, soup kitchens, outreach programs, and possibly other programs. A ''non-service user'' is anyone who does not use any of these services.

According to the 1987 Urban Institute study, the shelter frame covers homeless people who use shelters, which may be 35 to 40 percent of the homeless on any given night, and about 50 percent over the course of a week. If conducted on a one-night basis, the shelters' sampling frame taken by itself will miss many homeless who use shelters infrequently, homeless service users who do not use shelters but do use soup kitchens and other services, and homeless people who do not use any services. If data collection involves repeated samples from the same shelters over the course of a week or a month, a considerably higher proportion of the homeless (perhaps as high as 70 percent) is likely to be captured through a methodology based on shelters.

The soup kitchen sampling frame, taken by itself over the course of a week, will capture a proportion of very poor people residing in conventional dwellings who may turn out to be at imminent risk of homelessness. According to the 1987 Urban Institute study, 43 percent of soup kitchen users are not literally homeless. When shelter and soup kitchen frames are combined during the course of a week, the shelter and soup kitchen frames will probably cover about 70 percent of the literally homeless and a small but unknown proportion of the service-using at-risk population. When data collection covers a month (as planned for the national survey), the coverage will be even greater—perhaps as high as 85–90 percent of the literally homeless.

In many cities, the array of services for the homeless include one or more outreach programs. These programs may be operated by a shelter, soup kitchen, drop-in center, health care center, neighborhood center, or other service facility. Their target population is homeless people who do not routinely use shelters or soup kitchens. The outreach programs typically distribute food, and sometimes blankets or warm clothing. Outreach teams typically follow a route that covers the known locations frequented by homeless street people, or where homeless street people assemble at the time they know the ''food wagon'' will come by. Including outreach programs in a design as a sampling frame allows one to maintain the control and efficiency associated with sampling service programs and their users, while still reaching the ''reachable'' proportion of the street homeless population. Outreach programs are probably the best single source of information about the hidden street population and the most cost effective opportunity to make contact with the street population. Additional enumeration of street locations and encampments yields little overall coverage improvement when shelters, soup kitchens, and outreach programs are interviewed over time.

The NSHAPC is designed to cover as much of the literally homeless population as possible and still meet the cost considerations of the sponsors. From previous research, it appears that up to 90 percent coverage of the literally homeless population is achievable with the shelter/soup kitchen/outreach programs methodology conducted during a winter month. This service-based methodology will be considerably cheaper and easier than implementing a street enumeration to attempt to get the last 10 percent. In addition, even if the resources were committed to achieve full coverage, there is no guarantee we would get the last 10 percent.

b. Incentives to Participate in the Survey

Private university researchers, usually with funding from federal grants, have conducted past homeless surveys. In the past, researchers have paid respondents to participate in a survey, usually about $20. The NSHAPC survey will impose an extra burden on the service providers who are asked to participate in the survey since they will: participate in pre-contact meeting(s) with Census Bureau regional office staff; provide space at their facility for the Census Bureau's field representatives to interview sample persons on scheduled days and at scheduled times; and administer cash payments to the survey respondents. The NSHAPC survey also will impose an extra burden on the selected sample of homeless persons because they will be asked to remain at the service provider's facility for an interview that may take 45 minutes and respond to personal questions. Given these circumstances, we feel it is appropriate to offer a monetary incentive of $200 to each service provider and $10 to each respondent to guarantee their cooperation in the survey.

While there is no research specifically on the effects of paying the homeless, there is a strong research basis for the use of monetary incentives to increase the cooperation of economically disadvantaged populations. Two studies using random assignment have carefully examined the impact of incentives on survey cooperation.

The first study, by Stuart H. Kerachsky and Charles D. Mallor (1981), examined the use of incentives in surveys of Job Corps participants and a comparison group. Five thousand eight hundred people participated in the study. The survey population consisted of economically disadvantaged youths aged 16–21 at the beginning of the study. (The survey respondents were interviewed 3 times over 18 months). Survey respondents were offered either no incentive or a $5 payment for their participation in the 30 minute survey. (The 1991 equivalent value of the incentive payment is approximately $15.)

The impact of the monetary incentives was determined by comparing the survey response rates and other outcomes for the experimental group (the $5 incentive group) to those for the control group (the $0 incentive group). The most notable findings from this survey on the effect of respondent payments are:

- Response rates increased by offering a monetary incentive. [More people were located (10 percent) and completed the survey (5 percent) when an incentive was offered.]
- Item nonresponse rates decreased. (Fewer ''Don't Know'' responses.)
- The cost per completed interview was smaller for the group that was offered an inventive.

The second study, by the Educational testing Service (1991), examined the use of monetary incentives in the pilot test of the National Adult Literacy Survey. The sample population of 2,000 included a nationally representative sample of adults aged 16 and older living in households. The sample persons completed a 15 minute background questionnaire and a timed 45 minute test of literacy skills. The respondents received a monetary incentive of $0, $20, or $35 for participating in the survey. The impact was of the monetary incentives was determined by comparing the survey response rates and other outcomes for the experimental groups (the $20 and $35 incentive groups) to those for the control group (the $0) incentive group). The most notable findings from this survey on the effect of respondent payments are:

- Response rates for economically disadvantaged, minority, and high school dropout populations are

significantly improved by offering monetary incentives.

- The use of monetary incentives reduced item nonresponse and data collection costs.
- Many other studies have been done and articles written documenting the effect of monetary incentives on response rates.
- A study by Miller, Kennedy, and Bryant (1972) of the 1971 Health and Nutrition Examination Survey showed that offering a monetary incentive increased the response rate from 70 percent to 82 percent.
- A study by Chromy and Horvitz (1978) suggests that response rates were found to be unacceptably low when no monetary incentive was used. However, the participation rate increased from 70 to 85 percent with the use of monetary incentives.
- A study by Berk, Mathiowetz, Ward, and White (1988) discusses how monetary incentives improved the response rates of adults.

During 1991 and 1992, the University of Michigan Survey Research Center, examined the effects of monetary incentives on the willingness of youth to participate in the Youth Risk Behavior Surveillance System (YRBS) interview and on their motivation to answer YRBS questions as accurately and truthfully as possible. The study involved focus groups with about 6 to 8 teenagers (ages 12–19) in each group. The focus groups included teenagers from a range of ages, racial, and ethnic backgrounds and both sexes. In order to assess the impact of monetary incentives on respondent participation and the motivation group, interviews with both the youth and their parents occurred. A split sample experiment was conducted during the pretest interviews in order to more formally assess the effect of monetary incentives on respondent participation. The most notable findings from the YRBS on the effect of respondent payments are:

- Youth who are aware that they will be paid for completing an interview are more likely to agree to participate (the cooperation rate increased from 79 percent to 90 percent because of the respondent being paid for participating in the survey).

Note: The youth group participants stated that monetary compensation (the youth received $20 for participating in the study) was important to their keeping their appointments to participate in the study.

- Youth feel that monetary compensation increases the seriousness with which they approach the task of answering questions and increases the accuracy and truthfulness of their responses. This point is particularly relevant, given the personal nature of the NSHAPC questionnaire (i.e., drug and alcohol use and mental health status) and the fact that the NSHAPC questionnaire will be administered at the service provider facilities.

The first two studies show that the response rates for economically disadvantaged populations, which include homeless persons who use services, are significantly improved by offering monetary incentives. While the University of Michigan survey only dealt with the effects of monetary incentives on youth, the results not only show that youth respondents are more willing to cooperate when they receive payment but that the parents of the youth also feel that payment is beneficial in obtaining the respondents' participation. The results from this survey are noteworthy since the respondents for the NSHAPC will include both youth and adults.

No surveys have been conducted with homeless persons to actually compare the response rates of homeless persons who receive a monetary incentive for participation to those homeless persons who do not receive a monetary incentive for participation. However, there have been numerous studies conducted dealing with the homeless population, in which respondents were paid.

In a paper presented at the Fannie Mae Annual Housing conference in Washington, DC on May 14, 1991, Dr. Michael Dennis of the Research Triangle Institute presented a chronological summary of ten relevant studies on homelessness completed since 1983. (See Attachment D for a list of these studies.) In all ten studies, the respondents received payment for participating in the study. In February 1991, the Research Triangle Institute conducted the Washington, DC Metropolitan Area Drug Study (DC*MADS) and paid participants $10 along with offering them coffee, juices, Pop Tarts, and/or toothbrushes for taking the time to participate in the survey. The Research Triangle Institute also gave a $35 food donation to the service providers each morning they sampled at the provider's facility. In October 1991, the Wilder Foundation completed a statewide enumeration of homeless persons in Minnesota. Respondents received a $5 cash payment for the half-hour interview.

These past practices of paying respondents has direct implications on the NSHAPC survey design and on response rates of the NSHAPC. The success of the survey is dependent upon the cooperation of the service providers and respondents.

(1) Cooperation of Service Providers

Most service providers require (or prefer) respondents to be compensated for their participation in the survey. Paying the service providers is also critical to guarantee their cooperation. The cooperation of the service providers is essential for the following reasons:

(a) Providers determine if the voluntary survey will be conducted at the facility. They also determine logistical arrangements for conducting the interview.

(b) Providers must agree to allow respondents to remain at the facility (e.g., after eating) to be interviewed. Normally, persons are required to immediately leave the site once services are provided.

(c) Providers often have significant influence with homeless persons seeking their services.

(2) Respondent Cooperation

The survey design of the NSHAPC requires sampling persons at the facility. Paying respondents is critical to ensure that designated sample persons remain at the facility to be interviewed once they have used the services offered. Without payment, there is little incentive for respondents to remain on site for an interview that may take 45 minutes and asks personal questions, such as drug and alcohol use, mental health status, living conditions, victimizations, and imprisonment.

In our consultations with outside experts in this field, all persons indicated that paying respondents to participate in the survey was critical to achieving acceptable response rates. All experts agree that we should expect high nonresponse rates if respondents are not compensated for their participation.

To ensure the cooperation of the service providers and the respondents, we recommend that a Memorandum of Understanding (see Attachment E) be entered into by the U.S. Bureau of the Census and the service facility. Under this agreement, the Census Bureau will compensate the service providers for their help. For example, the Census Bureau will ask the service provider to:

- Participate in pre-contact meeting(s) with Census Bureau regional office staff to make logistical arrangements to conduct the survey.
- Make space available at the facility to interview sample persons.
- Agree to allow the field representatives to conduct interviews on scheduled days and at scheduled times

according to the statistical sampling schemes designed for the NSHAPC.

- Administer cash payments of $10 to survey respondents. Administering cash payments this way alleviates safety concerns about placing the field representatives and survey respondents at risk of crime.

We believe that the studies summarized here make a strong case for the use of monetary incentives to guarantee the cooperation of the service providers and the respondents.

4. Contacts for Statistical Aspects and Data Collection

The following individuals are being consulted on statistical aspects of the survey design:

Dr. Martha Burt, The Urban Institute, 2100 M Street, NW., Washington, DC 20037, Tel: (202) 857–8551

Dr. Michael Dennnis, Research Triangle Institute, Center for Social Research and Policy Analysis, PO Box 12194, Research Triangle Park, NC 27709–2194, Tel: (919) 541–6429

Dr. Charles H. Alexander, Demographic Statistical Methods Division, Bureau of the Census, Washington, DC 20233, (301) 457–4290

The Census Bureau will collect the data for this survey. Mr. Steven Tourkin is responsible for the collection of all data and is the Census Bureau contact person for the survey.

Mr. Steven C. Tourkin, Demographic Surveys Division, Bureau of the Census, Washington, DC 20233, (301) 457–3791

BILLING CODE 4210–62–M

Client No. (8)	RESERVED Hit Number from SHAPC-? (9)	Name of Client (10)	Remarks (11)
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Form NSHAPC - 300

ROSTER FOR PROVIDER FACILITY

(1) Provider Facility Name and Address

(2) Program for Which Client Interviews Will Be Conducted:

(3) Designated Date of Interview:

RESERVED FOR INTERVIEWER

(a) Arrival time: _____

(b) Departure time: _____

(c) RO: _____

(d) State/County _____

(e) Facility code: _____

(4) Intake Hours for Program:

from: ___/___ to: ___/___

(f) At end of visit

Actual number of clients: _____

(5) Do you normally keep a roster or log of your clients?

|_| Yes

|_| No

(6) How many clients do you expect will show up for the program, date and times given in (2), (3) and (4)?

_____

(7) Will all people listed on this roster be present during the hours indicated?

|_| Yes

|_| No (Indicate in Remarks)

Client No. (8)	RESERVED Hit Number from SHAPC-7 (9)	Name of Client (10)	Remarks (11)
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Sheet____of____sheets

NSHAPC-201 Attachment E

AGREEMENT BETWEEN _____ AND THE
(Provider Facility Name)

UNITED STATES BUREAU OF THE CENSUS

TEST SURVEY OF HOMELESS PERSONS WHO USE SERVICES

Background

The United States Bureau of the Census (Census Bureau), pursuant to a reimbursable agreement with the Department of Housing and Urban Development (HUD), plans to conduct a survey of homeless persons who use the services of the (_____), hereinafter
(Provider Facility Name)
called the Provider during February 1996, and will interview users at the Provider's location(s). The Provider will furnish the Census Bureau with interviewing space and assist in the distribution of payments to interviewees.

Terms

The Provider and the CENSUS BUREAU AGREE that:

1. The Provider will meet with Census Bureau Regional staff at least (7) days prior to initiation of the survey to discuss and agree upon arrangements for conducting interviews. The arrangements will include items such as, the number of days that the Census Bureau survey staff will visit the Provider's facilities, and the schedule of interview times.

2. The Provider will have its facility(ies) open and available to the Census Bureau survey staff during the scheduled interview times and have a Provider staff member present during those times.

3. The Provider will furnish the specified accommodations for conducting interviews. These accommodations shall include a separate room, (6) chairs, (3) tables, and sufficient lighting suitable for reading. The accommodations may be revised if other suitable arrangements can be provided.

4. Pursuant to HUD legal authority, interviewees will receive a one-time $10.00 payment. Funds for this purpose in the amount of $50.00 will be distributed in advance to the Provider. The Provider agrees to pay the interviewees upon completion of the interviews, and upon presentation of payment slips as provided to the interviewee by the interviewer. The Provider further agrees to collect and return all payment slips to the designated Census Regional office.

5. If the Provider operates any outreach program(s) and the Census Bureau decides to conduct interviews at those locations, the Provider will furnish at least one staff member to accompany the Census Bureau survey staff, and pay each interviewee at, or near, the completion of the interview.

6. Any Provider staff members assisting with this survey, or otherwise involved with this project, shall be sworn to maintain census confidentiality.

7. After completion of all interviews at the Provider's facility(ies) and outreach locations operated by the Provider, and after all payment slips are returned and/or accounted for, the Census Bureau shall provide an amount not to exceed $200.00 for the use of their facility(ies), plus $10.00 for each returned payment slip, such payments to be made pursuant to HUD legal authority. The final payment to the Provider will be determined as follows:

Payment for use of facility -- $200.00
Plus $10.00 for each completed interview
Minus initial payment of $50.00.

_____
(PROVIDER NAME)

by:_____
(Signature, Mgr., or Person in Charge)

_____
(Print Name)

_____
Title)

Date:_____

UNITED STATES CENSUS BUREAU

by:_____
(Signature, RO Supv.)

_____
(Print Name)

Date:_____

ATTACHMENT F

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OMB No.

FORM (9-7-95) NSHAPC-200(X)

U.S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS
ACTING AS COLLECTING AGENT FOR THE
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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SERVICE USERS

NATIONAL SURVEY OF HOMELESS ASSISTANCE PROVIDERS AND CLIENTS

NOTICE – By law (the Privacy Act (Title 5, United States Code, Section 552a(b)(4) which is incorporated in Section 1106 of the Social Security Act), the Census Bureau and all other sponsors must keep your answers confidential. Researchers will use the information you provide for statistical purposes only. The data files released to others will not include any information that could identify you, your family, or any organization.

A. RO code	B. State	C. County
D. PSU	E. Provider code	F. Questionnaire ID

G. Name of Provider	Program Type

H. Mailing address – *Number and street or Post Office Box*

City	State	ZIP Code

I. Field Representative name	ID code

INTERVIEW

J. Status – *Mark (X) one*	K. Date Month / Day	L. Time Start / Finish	M. Total time
01 ☐ Interviewed 02 ☐ Refused	☐☐ ☐☐	a.m. p.m. / a.m. p.m.	☐☐☐ Minutes

INTRODUCTION

Hello, I am (Field Representative's name) from the United States Bureau of the Census. Here is my identification card. We are conducting a survey for the Interagency Council on the Homeless, United States Department of Housing and Urban Development and other Federal agencies to obtain information on the persons who use services such as shelters and soup kitchens. The survey will take about 45 minutes of your time. The information you give me is used for statistical purposes only. None of the information you give which could identify you or this place will be released to the public. Participaing in this survey is voluntary. We will pay you for your time if you complete the questionnaire. If you have no questions, we will begin.

N. What is your name?	Last
	First / Middle initial
O. What is your age?	☐☐ Years

Notes

Section 1 – CURRENT LIVING CONDITION

This section asks you about your current living situation.

1a. As of today, do you have some place that you consider to be a permanent place where you live?

1☐ **Yes** – *GO to 1b*
2☐ **No** – *GO to Section 2*, Page_____
3☐ **Don't know**
4☐ **Refused**

b. Where is that located? (If city or town is not known, get a street address and make a determination of the city or town based on this information)

Address: _____
Number and Street

_____
City/town/borough/township/state/zip code

2. Do you pay to stay in the place where you live (even if someone else owns the place)?

1☐ **Yes, pay for my room, pay rent, mortgage, or already own it**
2☐ **No**
3☐ **Don't know**
4☐ **Refused**

3a. Where do you live? Is it an apartment, a room, a shelter, or some other kind of place?

1☐A house
2☐An apartment
3☐A room(other that hotel)
} GO to 3b

4☐Hotel or motel (place with separate rooms that you pay for yourself)
5☐Dormitory hotel (place without separate rooms that you pay for yourself)
6☐A migrant workers' camp
} GO to 6

7☐Transitional housing
8☐A shelter (includes transitional shelters)
9☐A welfare or voucher hotel
10☐A car or other vehicle
11☐An abandoned building
12☐A spot in a place of business (e.g., subway movie, bar, all-night restaurant, bus station, etc.)
13☐Any place outside (street,park,culverts, campgrounds, etc.)
14☐Some other place - Specify _____
15☐Don't know
16☐Refused
} GO to Section 2

b. What is the address of that place?

4. Who did that place belong to? That is, who paid the rent or mortgage? (Read all categories and mark (X) all that apply.)

1☐ **Own place** – *GO to Section 3*
2☐ **Someone else's place**
3☐ **Don't know**
4☐ **Refused**

5. Whose place is it?

1☐ **Parent's**
2☐ **Other relative's**
3☐ **Friend's** (include girlfriends and boyfriends)
4☐ **Someone else's place** – *Specify* _____
5☐ **Don't know**
6☐ **Refused**

Section 1 – CURRENT LIVING CONDITION (Continued)

6. How often do you use that place for sleeping? Would you say . . .? *(Read categories.)*	1☐ Every day 2☐ Almost every day 3☐ Once or twice a week 4☐ Less than once a week } *GO to Section 2* 5☐ Don't know 6☐ Refused
7. Do you have an arrangement with your (parents/relatives/-friends/someone else) to sleep in their place on a regular basis – that is, for 5 or more days a week?	1☐ Yes – *GO to Section 3* 2☐ No 3☐ Don't know 4☐ Refused } *GO to Section 2*

Notes

Section 2 – WITHOUT PERMANENT HOUSING

8a. During the last 24 hours, where did you sleep or rest? (Read response categories and mark (X) all that apply.)

1☐ Emergency shelter_____name
2☐ Transitional housing_____name
3☐ Someone else's home or apartment
4☐ In a program that offers permanent housing for homeless persons
5☐ Vouchered hotel/motel
6☐ Migrant housing used to house homeless persons in the off season
7☐ Migrant workers' camp
8☐ In an institution (jail, hospital, detoxification centers)
9☐ Transportation (bus station, airport, subway station)
10☐ Commercial Place of business (all-night movie, bar, laundromat, restaurant, farm building, etc)
11☐ A car, bus, truck, or van (including abandoned vehicles)
12☐ An abandoned building
13☐ Anywhere outside (street, park, cardboard box, campground, etc.)
14☐ Someplace else - Specify _____
15☐ Did not sleep or rest during last 24 hours
16☐ Don't know
17☐ Refused

8b. Of the places mentioned, in which did you spend the most time?

_____
fill in the number from categories above

c. In what city or town is that located? (If city or town is not known, get a street address and make a determination of the city or town based on this information.

Address: _____
Number and Street

_____
City/town/borough/township/state/zip code

9a.

See attached page for revised question.

(Ask if shelter marked in 8a or 8a)

b. Can you tell me the names of the shelters you have used in the last 7 days?

CHECK ITEM 1

Check Item 1 is deleted.

CHECK ITEM 2

Is 8a marked "1" or "3" or 9a marked "3" or "4"?

1☐ **Yes – *GO to 10b***
2☐ **No**

Section 2 – WITHOUT PERMANENT HOUSING (Continued)

9a. Over the last seven days since (day of interview), on which nights did you sleep or rest in the following places? (Read all categories. Each day column should have at least one "X". If not, correct answers.)

		Su	M	T	W	Th	F	Sa
☐	In my own house, apartment, or room (includes foster and group homes)							
☐	In someone else's home, apartment, or room							
☐	In an emergency shelter							
☐	In a vouchered hotel/motel							
☐	In a transitional housing facility							
☐	In a program that offers permanent housing							
☐	In migrant housing used to house homeless people in the off season							
☐	In an institution (jail, hospital, detoxification centers)							
☐	In a place of business (bus, bus station, all–night movie, airport, subway, bar, laundromat, restaurant, farm building, etc.)							
☐	In a car, van, truck, or other vehicle (including abandoned vehicles)							
☐	Anywhere outside (on the streets, in a park, under a culvert, in a cardboard box, on a bench, campground, etc.)							
☐	Did not sleep over the last seven days							
☐	Elsewhere, specify _____							
☐	Don't know Go to							
☐	Refused							

SECTION 2 - WITHOUT PERMANENT HOUSING (CONTINUED)

10.	See attached page for revised question.	
11.	Other than shelters, when was the last time you had a house, apartment, room or other regular place to stay? (Regular is defined as 5 or more days.)	☐ _____ days ago ☐ _____ weeks ago ☐ _____ months ago ☐ _____ years and _____ months ago ☐ Don't know ☐ Refused
12.	Was it a....? (Read choices and mark (X) one answer.)	☐ House (includes trailer and mobile home ☐ Apartment ☐ Room ☐ Some other kind of place - Specify_____ ☐ Don't know ☐ Refused
13.	Did anyone else live with you, including children, or other adults, or did you live there all by yourself?	☐ Lived by myself (no spouse, no children, no one else) - Go to 15 ☐ Lived with other people ☐ Don't know ☐ Refused
14.	If you lived with other people, who did you share that place with? (Read categories and mark (X) all that apply.)	☐ Spouse ☐ Children (natural-born, adopted or stepchildren under 18 years old) ☐ Parents (mother and/or father, mother- and/or father-in-law ☐ Foster family ☐ Sisters and/or brothers, in-laws ☐ Your adult children (18 years and over) ☐ Grandparents ☐ Other relatives ☐ Partner/boyfriend/girlfriend ☐ Friends ☐ Other residents ☐ Other persons - Specify _____ ☐ Don't know ☐ Refused

Section 2 – WITHOUT PERMANENT HOUSING (Continued)

10a Have you ever slept in a shelter?

☐ ___ Yes
☐ ___ No
☐ ___ Don't' know
☐ ___ Refused

Go to 10c

10b When was the last time you slept in a shelter?

☐ ____ Last night
☐ ____ days ago
☐ ____ weeks ago
☐ ____ months ago
☐ ____ 13 - 24 months ago
☐ ____ 3 or more years
☐ ____ Never
☐ ____ Don't Know
☐ ____ Refused

10c Have you ever slept in a room paid for by a voucher, for example, a ticket or coupon or receipt used for a room or place to stay.

☐ ___ Yes
☐ ___ No
☐ ___ Don't' know
☐ ___ Refused

Go to 10e

10d When was the last time you slept in a room paid for by a voucher?

☐ ____ Last night
☐ ____ days ago
☐ ____ weeks ago
☐ ____ months ago
☐ ____ 13 - 24 months ago
☐ ____ 3 or more years
☐ ____ Never
☐ ____ Don't Know
☐ ____ Refused

10e Have you ever slept in a transitional housing facility?

☐ ___ Yes
☐ ___ No
☐ ___ Don't' know
☐ ___ Refused

Go to 10g

Section 2 – WITHOUT PERMANENT HOUSING (Continued)

10f When was the last time you slept in a transitional housing facility?

☐ ____ Last night
☐ ____ days ago
☐ ____ weeks ago
☐ ____ months ago
☐ ____ 13 - 24 months ago
☐ ____ 3 or more years
☐ ____ Never
☐ ____ Don't Know
☐ ____ Refused

10g Have you ever participated in a program that offers permanent housing for the homeless?

☐ ___ Yes
☐ ___ No ----------
☐ ___ Don't' know] Go to 10j
☐ ___ Refused -------

10h When did you participate in the program?_____
date

10i When was the last time you slept in a place offering permanent housing for the homeless?

☐ ____ Last night
☐ ____ days ago
☐ ____ weeks ago
☐ ____ months ago
☐ ____ 13 - 24 months ago
☐ ____ 3 or more years
☐ ____ Never
☐ ____ Don't Know
☐ ____ Refused

10j Have you ever slept in a migrant workers facility that houses homeless people in the offseason?

☐ ___ Yes
☐ ___ No ----------
☐ ___ Don't' know] Go to 11
☐ ___ Refused -------

10k When was the last time you slept in a migrant workers facility that houses homeless people in the offseason?

____ Last night
____ days ago
____ weeks ago
____ months ago
____ 13 - 24 months ago
____ 3 or more years
____ Never
____ Don't Know
____ Refused

Section 2 – WITHOUT PERMANENT HOUSING (Continued)

15. Who paid the rent or mortgage or owned it? (Read categories and mark (X) all that apply.)	1☐ Self 2☐ Spouse 3☐ Parents (mother and/or father, mother- and/or father-in-law) 4☐ Foster family 5☐ Sisters and/or brothers, in-laws 6☐ Your adult children (18 years and over) 7☐ Grandparents 8☐ Other relatives 9☐ Partner/boyfriend/girlfriend 10☐ Friends 11☐ Non-profit/government program or institution 12☐ Other persons – *Specify* _____ 13☐ Don't know 14☐ Refused
16a. Why did you leave that place? Was it because...? (Read choices and mark(X) all that apply.)	1☐ Couldn't pay the rent 2☐ Someone who paid the rent/mortgage stopped paying it 3☐ Lost your job 4☐ Lost welfare or other cash assistance benefit 5☐ Was drinking 6☐ Was doing drugs 7☐ Went into hospital or treatment program 8☐ ARC/AIDS/HIV-related 9☐ Was pregnant/just had baby 10☐ Became sick or disabled (other than ARC/AIDS related) 11☐ Went into military 12☐ Went to jail or prison 13☐ Left town 14☐ Didn't get along with people there 15☐ People you were staying with asked you to leave 16☐ Pushed out, kicked out 17☐ Landlord made you leave 18☐ Building condemned, destroyed or urban renewal 19☐ Fire 20☐ You, or children, abused, beaten, violence in household 21☐ Released, dismissed, discharged 22☐ Other – *Specify* _____ 23☐ Don't know 24☐ Refused
b. (Repeat answers marked in 16a, and ask), OF those, what was the main reason that you left?	☐☐ Reason number
(Ask only if "Yes" marked in Check Item 2 or 10a) ***(SHOW FLASHCARD)*** **17. Between the time you left that place and now, how much time have you spent in shelters?**	1☐ All of the time 2☐ Most of the time 3☐ About three-quarters of the time 4☐ About half of the time 5☐ About one-quarter of the time 6☐ Almost none of the time 7☐ None of the time 8☐ Don't know 9☐ Refused

SECTION 2 - WITHOUT PERMANENT HOUSING (CONTINUED)

18a. Since you left your last permanent place, have you spent time in ... ?
(Read choices and mark (X) all that apply

If all "No" in 18a, go to 20.
18b. If "Yes" in 18a, ask: How much time did you spend in ... ?

	1 week	1 month	1–6 months	7–12 months	13–24 months	More than 2 years
☐ Temporary place of your own (paid for by you)						
☐ Homes of relatives						
☐ Homes of friends						
☐ Foster home						
☐ Mental hospital or psychiatric ward						
☐ Veterans Affairs hospital						
☐ Other hospital						
☐ Nursing home, board and care home, group home						
☐ Migrant workers camp						
☐ Military						
☐ Jail or prison						
☐ Halfway house for probation and parole						
☐ Residential recovery program such as substance abuse halfway house, 3/4 house						
☐ Other – Specify _____						
☐ Don't know						
☐ Refused						

CHECK
ITEM 3 If all responses in 18a marked "No", Go to 20

19.	(SHOW FLASHCARD) When you were without a permanent home for the last time, how much about how much time did you spend in these places? (Do not include time spend at shelters.)	☐ All of the time ☐ Most of the time ☐ About three-quarters of the time ☐ About half of the time ☐ About one-quarter of the time ☐ Almost none of the time ☐ None of the time ☐ Don't know ☐ Refused
20a.	Have you EVER had a place where you paid the rent, your name was on the lease, or you owned it?	☐ Yes ☐ No - Go to 21 ☐ Don't Know ☐ Refused
b.	Did you have that place by...? (Read categories and Mark (X) all that apply.	☐ Yourself ☐ With a spouse ☐ With someone else - Specify, _____ ☐ Refused

		a. A foster home	b. A group home	c. Any other kind of institution
21.	As a child or teenager, did you ever live in any of the following places? (Read choices and mark (X) one answer in each column.)	1 ☐ Yes 2 ☐ No 3 ☐ Don't know 4 ☐ Refused	1 ☐ Yes 2 ☐ No 3 ☐ Don't know 4 ☐ Refused	1 ☐ Yes 2 ☐ No 3 ☐ Don't know 4 ☐ Refused

Section 2 – WITHOUT PERMANENT HOUSING (Continued)	
22.	See attached page for revised question.
23. Altogether, how much time did you spend away from home before you were 18 years old?	1☐ Less than one week 2☐ 1–4 weeks 3☐ 1–6 months 4☐ 7–12 months 5☐ 13–24 months 6☐ More than 2 years 7☐ Don't know 8☐ Refused
24. (INCLUDING THIS TIME), how many times in your life have you been (homeless/without permanent housing)? That is, not living in your own house, apartment, or room on a regular basis?	1 Just this time - GO to 28 2 _____Times before this time
25. How long were you (homeless/without permanent housing) during the period (of homelessness) just before this one?	1☐ _____ days of days 2☐ _____ weeks of weeks 3☐ _____ months 4☐ _____ years and _____ months 5☐ Don't know 6☐ Refused
26. How long ago did your LAST period (of homelessness/without permanent housing) end? (Refers to the previous time)	1☐ _____ days ago 2☐ _____ weeks ago 3☐ _____ months ago 4☐ _____ years and _____ months 5☐ Don't know 6☐ Refused
27. How old were you when you FIRST found yourself without permanent housing or a regular place to stay?	1 _____ Age
28. Where were you living when you became (homeless/without permanent housing) THIS time?	1☐ _____ Town/City State 2☐ Don't know 3☐ Refused
CHECK ITEM 4 **Is (Town/City) same location as interview city?**	1☐ Yes – *GO to 56* 2☐ No

Section 2 – WITHOUT PERMANENT HOUSING (Continued)

22a. As a child or teenager, did you ever run away from home for more than 24 hours?

- ☐ Yes
- ☐ No
- ☐ Don't know
- ☐ Refused

22b. As a child or teenager, were you ever forced to leave your home or pushed out for more than 24 hours? (Includes time spent in a foster or group home or other institution.)

- ☐ Yes
- ☐ No
- ☐ Don't know
- ☐ Refused

Section 2 – WITHOUT PERMANENT HOUSING (Continued)

29. **Why did you leave** *(City in 28)? (Mark (X) all that apply.)*	1☐ No jobs available 2☐ No help available from family 3☐ Used available services until exceeded time limit 4☐ Entered institution in another city (e.g., jail, mental hospital) 5☐ No services in that place 6☐ Made to leave (given bus fare to leave town, driven to county line, etc.) 7☐ Close of agricultural season 8☐ Other – *Specify* ____ 9☐ Refused
30. Why did you come to (Interview city)? (Mark (X) all that apply.	1☐ To look for work, heard jobs were here 2☐ Cheap housing 3☐ Had friends and/or relatives here 4☐ Availability of shelters/missions 5☐ Good services/programs 6☐ Climate 7☐ Following crops 8☐ On the way to where I am going, just passing through 9☐ No particular reason 10☐ Other – *Specify* ____ 11☐ Refused
31. When did you come to (Interview City)?	____/____ month year ☐Here all my live
32. **Since you (became homeless/left your last permanent place), how many towns/cities have you stayed 2 or more days in?**	1☐ 1 place 2☐ 2 places 3☐ 3 places 4☐ 4 places 5☐ 5 to 10 places 6☐ 11 or more places — Go to 56

(Ask only if homeless)

Are any adults, who are homeless, with you or are you by yourself?

____Respondent is by her/himself
____Spouse
____Other relative, specify____
____Nonfamily, specify____
____Don't know
____Refused

Section 3 – CURRENTLY WITH PERMANENT HOUSING

33a. See attached page for revised question.	
b. *(Ask if shelter marked in 33a)* **Can you tell me the names of the shelters you have used in the last 7 days?**	
CHECK ITEMS **Is there at least one "X" in each day column in 33a?**	1☐ Yes – *Continue with 34* 2☐ No – *Go back and correct answers until each day column has at least one "X"*
34. Have you ever been (homeless/without permanent housing), that is, not living in your own house, apartment, or room on a regular basis?	1☐ Yes 2☐ No – *GO to 56* 3☐ Don't know 4☐ Refused
35. How many times in your life have you been (homeless/without permanent housing)?	_____ Number of times
36. How old were you the first time you were (homeless/without permanent housing)?	_____ Age
37. How long were you (homeless/without permanent housing)? If more than once, use the most recent one.	1☐ _____ days ago (If less than one week, enter the number of days) 2☐ _____ weeks ago (If less than one month, enter the number of weeks) 3☐ _____ months ago (if less than one year, enter the number of months) 4☐ _____ years and _____ months 5☐ Don't know 6☐ Refused
38. How long ago did your last period (of homelessness/without permanent housing) end?	1☐ _____ days ago (If within the past week, enter the number of days) 2☐ _____ weeks ago (If 1–4 weeks ago, enter the number of weeks) 3☐ _____ months ago (if 1–12 months ago, enter the number of months) 4☐ _____ years and _____ months 5☐ Don't know 6☐ Refused

Section 3 – CURRENTLY WITH PERMANENT HOUSING

33a. Over the last seven days since (day of interview), on which nights did you sleep or rest in the following places? (Read all categories. Each day column should have at least one "X". If not, correct answers.)

		Su	M	T	W	Th	F	Sa
☐	In my own house, apartment, or room (includes foster and group homes)							
☐	In someone else's home, apartment, or room							
☐	In an emergency shelter							
☐	In a vouchered hotel/motel							
☐	In a transitional housing facility							
☐	In a program that offers permanent housing							
☐	In migrant housing used to house homeless people in the off season							
☐	In an institution (jail, hospital, detoxification centers)							
☐	In a place of business (bus, bus station, all–night movie, airport, subway, bar, laundromat, restaurant, farm building, etc.)							
☐	In a car, van, truck, or other vehicle (including abandoned vehicles)							
☐	Anywhere outside (on the streets, in a park, under a culvert, in a cardboard box, on a bench, campground, etc.)							
☐	Did not sleep over the last seven days							
☐	Elsewhere, specify _____							
☐	Don't know Go to							
☐	Refused							

Section 3 – CURRENTLY WITH PERMANENT HOUSING (Continued)

39. See attached page for revised question.

40. Question 40 was deleted.

41.	**Please think about the LAST time you did not have a home or regular place to stay. What type of place were you living in just before you were (homeless/without permanent housing) the LAST time? Was it a . . .?** *(Read categories.)*	1☐ **House** 2☐ **Apartment** 3☐ **Room** 4☐ **Some other kind of place – *Specify*** _____ 5☐ **Don't know** 6☐ **Refused**
42.	**Did anyone else live with you, including children, or other adults, or did you live there by yourself?**	1☐ **Lived by myself (no spouse, no children, no one else) – *GO to 44*** 2☐ **Lived with other people** 3☐ **Don't know** 4☐ **Refused**
43.	**If you lived with other people, did you share that place with . . .?** *(Read categories and mark (X) all that apply.)*	1☐ **Spouse** 2☐ **Children** 3☐ **Parents (mother and/or father, mother- and/or father-in-law)** 4☐ **Foster family** 5☐ **Sisters and/or brothers, in-laws** 6☐ **Your adult children** 7☐ **Grandparents** 8☐ **Other relatives** 9☐ **Partner/boyfriend/girlfriend** 10☐ **Friends** 11☐ **Other residents** 12☐ **Other persons – *Specify*** _____ 13☐ **Don't know** 14☐ **Refused**
44.	Who paid the rent or mortgage or owned it? (Mark (X) all that apply.)	1☐ Self 2☐ Spouse 3☐ Parents (mother and/or father, mother-and/or father-in-law 4☐ Foster family 5☐ Sisters and/or brothers, in-laws 6☐ Your adult children (18 years and over) 7☐ Grandparents 8☐ Other relatives 9☐ Partner/boyfriend/girlfriend 10☐ Friends 11☐ Non-profit/government program or institution 12☐ Other Persons - Speicfy_____ 13☐ Don't know 14☐ Refused

Section 3 – CURRENTLY WITH PERMANENT HOUSING (Continued)

39a Have you ever slept in a shelter?

☐ ___ Yes
☐ ___ No
☐ ___ Don't' know
☐ ___ Refused

Go to 39c

39b When was the last time you slept in a shelter?

☐ ____ Last night
☐ ____ days ago
☐ ____ weeks ago
☐ ____ months ago
☐ ____ 13 - 24 months ago
☐ ____ 3 or more years
☐ ____ Never
☐ ____ Don't Know
☐ ____ Refused

39c Have you ever slept in a room paid for by a voucher, for example a ticket or coupon or receipt used for a room or place to stay.

☐ ___ Yes
☐ ___ No
☐ ___ Don't' know
☐ ___ Refused

Go to 39e

39d When was the last time you slept in a room paid for by a voucher?

☐ ____ Last night
☐ ____ days ago
☐ ____ weeks ago
☐ ____ months ago
☐ ____ 13 - 24 months ago
☐ ____ 3 or more years
☐ ____ Never
☐ ____ Don't Know
☐ ____ Refused

39e Have you ever slept in a transitional housing facility?

☐ ___ Yes
☐ ___ No
☐ ___ Don't' know
☐ ___ Refused

Go to 39g

Section 3 – CURRENTLY WITH PERMANENT HOUSING (Continued)

39f When was the last time you slept in a transitional housing facility?

- ☐ ____ Last night
- ☐ ____ days ago
- ☐ ____ weeks ago
- ☐ ____ months ago
- ☐ ____ 13 - 24 months ago
- ☐ ____ 3 or more years
- ☐ ____ Never
- ☐ ____ Don't Know
- ☐ ____ Refused

39g Have you ever participated in a program that offers permanent housing for the homeless?

- ☐ ___ Yes
- ☐ ___ No
- ☐ ___ Don't' know
- ☐ ___ Refused

Go to 39j

39h When did you participate in the program?_____
date

39i When was the last time you slept in a place offering permanent housing for the homeless?

- ☐ ____ Last night
- ☐ ____ days ago
- ☐ ____ weeks ago
- ☐ ____ months ago
- ☐ ____ 13 - 24 months ago
- ☐ ____ 3 or more years
- ☐ ____ Never
- ☐ ____ Don't Know
- ☐ ____ Refused

39j Have you ever slept in a migrant workers facility that houses homeless people in the offseason?

- ☐ ___ Yes
- ☐ ___ No
- ☐ ___ Don't' know
- ☐ ___ **Refused**

Go to 41

39k **When was the last time you slept in a migrant workers facility that houses homeless people in the offseason?**

- ____ Last night
- ____ days ago
- ____ weeks ago
- ____ months ago
- ____ 13 - 24 months ago
- ____ 3 or more years
- ____ Never
- ____ **Don't Know**
- ____ **Refused**

SECTION 3 - CURRENTLY WITH PERMANENT HOUSING (CONTINUED)	
45a. Why did you leave that place? Was is because....?	☐ Couldn't pay the rent ☐ Someone who paid the rent/mortgage stopped paying it ☐ Lost your job ☐ Lost job - seasonal farm work ended ☐ Lost welfare or other cash assistance benefit ☐ Was drinking ☐ Was doing drugs ☐ Went into hospital or treatment program ☐ ARC/AIDS/HIV-related ☐ Was pregnant/Just had baby ☐ Became sick or disabled (other than ARC/AIDS related) ☐ Went into military ☐ Went to jail or prison ☐ Left town ☐ Didn't get along with people there ☐ People you were staying with asked you to leave ☐ Pushed out, kicked out ☐ Landlord made you leave ☐ Building condemned, destroyed or urban renewal ☐ Fire ☐ You, or children, abused, beaten, violence in household ☐ Released, dismissed, discharged ☐ Other - Specify _____ ☐ Don't know ☐ Refused
b. (Repeat answer marked in 45a and ask) Of those, what was the main reason that you left?	_____ Reason
(ASK ONLY IF Q.39 marked yes) (SHOW FLASHCARD) 46. During the time that you were homeless/did not have a permanent place to stay), about how much time did you spend in shelters?	☐ All of the time ☐ Most of the time ☐ About three-quarters of the time ☐ About half of the time ☐ About one-quarter of the time ☐ Almost none of the time ☐ None of the time ☐ Don't know ☐ Refused

SECTION 3 - CURRENTLY WITH PERMANENT HOUSING (CONTINUED)

If all "No" in 47a, go to 48.

47a. Since you left your last permanent place, have you spent time in ... ?
(Read choices and mark (X) all that apply

47b. If "Yes" in 47a, ask: How much time did you spend in ... ?

	1 week	1 month	1–6 months	7–12 months	13–24 months	More than 2 years
☐ Temporary place of your own (paid for by you)						
☐ Homes of relatives						
☐ Homes of friends						
☐ Foster home						
☐ Mental hospital or psychiatric ward						
☐ Veterans Affairs hospital						
☐ Other hospital						
☐ Nursing home, board and care home, group home						
☐ Migrant workers camp						
☐ Military						
☐ Jail or prison						
☐ Halfway house for probation and parole						
☐ Residential recovery program such as substance abuse halfway house, 3/4 house						
☐ Other – Specify _____						
☐ Don't know						
☐ Refused						

CHECK ITEM 6	Are responses in Q.47a all marked "No?"	☐ Yes - Go to 48 ☐ No
47c.	(SHOW FLASHCARD) When you were without a home the last time, about how much time did you spend in these places? (Do not include time spend at shelters.)	☐ All of the time ☐ Most of the time ☐ About three-quarters of the time ☐ About half of the time ☐ About one-quarter of the time ☐ Almost none of the time ☐ None of the time ☐ Don't know ☐ Refused

48. As a child or teenager, did you ever live in any of the following places? (Read choices and mark (X) one answer in each column.)

a. A foster home	b. A group home	c. Any other kind of institution
1 ☐ Yes	1 ☐ Yes	1 ☐ Yes
2 ☐ No	2 ☐ No	2 ☐ No
3 ☐ Don't know	3 ☐ Don't know	3 ☐ Don't know
4 ☐ Refused	4 ☐ Refused	4 ☐ Refused

49. See attached page for revised question.

SECTION 3 - CURRENTLY WITH PERMANENT HOUSING (CONTINUED)		
49a.	As a child or teenager, did you ever runaway from home for more than 24 hours?	☐ Yes ☐ No ☐ Don't know ☐ Refused
49b.	As a child or teenager, were you ever forced to leave your home or pushed out for more than 24 hours? (Includes time spent in a foster home or other institution.)	☐ Yes ☐ No ☐ Don't know ☐ Refused

Section 3 – CURRENTLY WITH PERMANENT HOUSING (Continued)

50. Altogether, how much time did you spend away from home before you turned 18?	1 ☐ Less than one week 2 ☐ 1–4 weeks 3 ☐ 1–6 months 4 ☐ 7–12 months 5 ☐ 13–24 months 6 ☐ More than 2 years 7 ☐ Refused
51. When you were (homeless/-without permanent housing) the last time, where were you living?	1 ☐ Town/City _____ State 2 ☐ Don't know 3 ☐ Refused
CHECK ITEM 7 Is (Town/City) SAME as interview city?	1 ☐ Yes – *GO TO Q.54* 2 ☐ No
52. Why did you leave *(City in Q.51)?* *(Mark (X) all that apply.)*	1 ☐ No jobs available 2 ☐ No help available from family 3 ☐ Used available services until exceeded time limit 4 ☐ Entered institution in another city (e.g., jail, mental hospital) 5 ☐ No services in that place 6 ☐ Made to leave (given bus fare to leave town, driven to county line, etc.) 7 ☐ Close of agricultural season 8 ☐ Other – *Specify* _____ 9 ☐ Refused
53. Why did you come here to *(Interview city)?* *(Mark (X) all that apply.)*	1 ☐ To look for work, heard jobs were here 2 ☐ Cheap housing 3 ☐ Had friends and/or relatives here 4 ☐ Availability of shelters/missions 5 ☐ Good services/programs 6 ☐ Climate 7 ☐ Following crops 8 ☐ On the way to where I am going, just passing through 9 ☐ No particular reason 10 ☐ Other – *Specify* _____ 11 ☐ Refused
54. How long have you been in *(Interview city)?*	1 ☐ Less than 3 months 2 ☐ 4 to 6 months 3 ☐ 7 to 12 months 4 ☐ 13 to 23 months 5 ☐ 2 to 5 years 6 ☐ 6 to 10 years 7 ☐ More than 10 years but less than all my life 8 ☐ All my life
55. When you were (homeless/-without permanent housing), in how many towns/cities did you stay 2 or more days?	1 ☐ 1 place 2 ☐ 2 places 3 ☐ 3 places 4 ☐ 4 places 5 ☐ 5 to 10 places 6 ☐ 11 or more places

Section 4 – DEMOGRAPHICS

The next questions ask for some basic background information about you.

56. Gender: (FILL BY OBSERVATION)	1 ☐ Male 2 ☐ Female
(SHOW FLASHCARD) **57a.** What is your race? (Mark (X) one box for race that the person considers himself/herself to be.)	1 ☐ Black 2 ☐ White 3 ☐ American Indian/Native American 4 ☐ Asian/Pacific Islander 5 ☐ Other – *Specify* _____ 6 ☐ Don't know 7 ☐ Refused
(SHOW FLASHCARD) **b. Are you of Spanish/Hispanic origin? For example: Mexican, Mexican/American, Cuban, Puerto Rican.**	1 ☐ Yes 2 ☐ No (not Spanish/Hispanic) – *GO to 58*
c. Which Spanish/Hispanic group are you?	1 ☐ Mexican 2 ☐ Puerto Rican 3 ☐ Cuban 4 ☐ Other Spanish/Hispanic
58. What is your date of birth?	Month ☐☐ Day ☐☐ Year ☐☐ ☐ Don't know ☐ Refused
59. How much school have you completed? ***(Read categories if person is unsure. Mark (X) for the highest level completed or degree received. If currently enrolled, mark the level of previous grade attended or highest degree received.)***	1☐ No school completed 2☐ Pre-school 3☐ Kindergarten 4☐ 1st, 2nd, 3rd, 4th grade 5☐ 5th, 6th, 7th, 8th grade 6☐ 9th grade 7☐ 10th grade 8☐ 11th grade 9☐ 12th grade, NO DIPLOMA 10☐ HIGH SCHOOL GRADUATE - high school DIPLOMA 11☐ GED 12☐ Vocational training certificate 13☐ Some college but no degree 14☐ Associate degree in college - Occupational program 15☐ Associate degree in college - Academic program 16☐ Bachelor's degree (e.g., BA, AB, BS) 17☐ Master's degree (e.g., MA, MEng, MEd, MSW, MBA) 18☐ Professional school degree (e.g., MD, DDS, DVM, LLB, JD) 19☐ Doctorate degree (e.g., PHd, EdD)

60.

See attached page for revised question.

Section 4 – DEMOGRAPHICS (Continued)

60a. Are you working on any diploma, degree, course, or training program now?

___ yes

___ no - Go to 60c

60b. What type of diploma, degree, courses or training program are you working on?

___ Yes, on G.E.D
___ Yes, on high school diploma
___ Yes, on college courses or degree
___ Yes, on vocational or other training program or apprenticeship
___ Other - Specify _____
___ Don't Know
___ Refused

60c. (ASK ONLY IF RESPONDENT IS UNDER 18 YEARS OLD)
Why are you not working on any diploma, degree, course, or training program now?

___ Not interested
___ Problems with transportation, no transportation
___ Can't register, no documents
___ Don't stay in one place long enough
___ Lack of clothing, shoes, can't keep clean
___ Don't like school
___ Has to watch their children
___ Has to babysit younger brothers/sisters
___ Sick, doesn't feel well
___ Too tired, can't get up in the morning
___ Working
___ Other, specify_____
___ Has to watch their children

SECTION 4 - DEMOGRAPHICS		
61a.	Did you ever repeat one or more grades in school?	☐ No ☐ Repeated one grade ☐ Repeated more than one grade ☐ Don't know ☐ Refused
b.	Were you ever enrolled in special education?	☐ Yes ☐ No
62a.	Did you ever drop out of school?	☐ No, never dropped out ☐ Dropped out of elementary school (1-4) ☐ Dropped out of junior high/middle school (5-8) ☐ Dropped out of senior high (9-12) ☐ Don't know ☐ Refused
b.	Were you ever suspended?	☐ Yes ☐ No
c.	Were you ever expelled?	☐ Yes ☐ No
63.	What is your marital status? Are you....? (Read categories and mark (X) all that apply.)	☐ Now married ☐ Widowed ☐ Divorced ☐ Separated ☐ Never Married ☐ Don't know ☐ Refused
	(ASK ONLY OF FEMALES) Are you pregnant now?	☐ Yes ☐ No ☐ Don't know ☐ Refused
64a.	What is your social security number?	___ ___ - ___ ___ - ___ ___ ___ ___
b.	(If social security number is refused, ask) What are the first five digits of your social security number?	___ ___ - ___ ___ ___ ☐ Don't know ☐ Refused

Section 5 – CHILDREN AND EDUCATION

The next questions ask you about any children you may have. **65. Do you have any children?**	1 ☐ Yes 2 ☐ No 3 ☐ Don't know 4 ☐ Refused } *GO to 74*		
66. How many children do you have who are – **a. Under 18?**	____under 18 years old		
b. 18 and over?	____18 years and older - Go to 74		
Complete questions 67a through 71h for ONE child at a time.	**CHILD 1** Name	**CHILD 2** Name	**CHILD 3** Name
67a. What is the name and age of each child under 18? *(Enter number of months if under one year of age)*	_____ Year(s) OR _____ Month(s) 1 ☐ Don't know 2 ☐ Refused	_____ Year(s) OR _____ Month(s) 1 ☐ Don't know 2 ☐ Refused	_____ Year(s) OR _____ Month(s) 1 ☐ Don't know 2 ☐ Refused
b. What is *(Child's name)*'s sex?	1 ☐ Male 2 ☐ Female	1 ☐ Male 2 ☐ Female	1 ☐ Male 2 ☐ Female
68. Does *(Child's name)* live with you?	1 ☐ Yes – Go to 71a 2 ☐ No	1 ☐ Yes – *GO to Check Item B* 2 ☐ No	1 ☐ Yes – *GO to Check Item B* 2 ☐ No
69. With whom does (child's name) live now?	1☐ Child lives with his/her other parents 2☐ Child lives with my parent(s) or in-laws 3☐ Child lives with other relatives 4☐ Child is in foster care, group home 5☐ Jail or other institution 6☐ Other - Specify _____ 7☐ Don't know where child lives 8☐ Refused	1☐ Child lives with his/her other parents 2☐ Child lives with my parent(s) or in-laws 3☐ Child lives with other relatives 4☐ Child is in foster care, group home 5☐ Jail or other institution 6☐ Other - Specify _____ 7☐ Don't know where child lives 8☐ Refused	1☐ Child lives with his/her other parents 2☐ Child lives with my parent(s) or in-laws 3☐ Child lives with other relatives 4☐ Child is in foster care, group home 5☐ Jail or other institution 6☐ Other - Specify _____ 7☐ Don't know where child lives 8☐ Refused
70. How long has it been since *(Child's name)* has lived with you?	1 ☐ 0 to 6 months 2 ☐ 7 to 12 months 3 ☐ 1 to 2 years 4 ☐ 3 to 4 years 5 ☐ More than 4 years 6 ☐ Child never lived with me – *GO to 72* 7 ☐ Refused	1 ☐ 0 to 6 months 2 ☐ 7 to 12 months 3 ☐ 1 to 2 years 4 ☐ 3 to 4 years 5 ☐ More than 4 years 6 ☐ Child never lived with me – *GO to 72* 7 ☐ Refused	1 ☐ 0 to 6 months 2 ☐ 7 to 12 months 3 ☐ 1 to 2 years 4 ☐ 3 to 4 years 5 ☐ More than 4 years 6 ☐ Child never lived with me – *GO to 72* 7 ☐ Refused
CHECK ITEM B If 68 is marked "Yes" and child's age is –	☐ 6 years or older – *Ask 71a* ☐ 3, 4 or 5 years old – *GO to 71b* ☐ Less than 3 years – *GO to 71g*	☐ 6 years or older – *Ask 71a* ☐ 3, 4 or 5 years old – *GO to 71b* ☐ Less than 3 years – *GO to 71g*	☐ 6 years or older – *Ask 71a* ☐ 3, 4 or 5 years old – *GO to 71b* ☐ Less than 3 years – *GO to 71g*
71a. Does *(Child's name)* attend school?	1 ☐ Yes, regularly attends school – *GO to 71e* 2 ☐ Attends school but not regularly, misses a lot – *GO to 71c* 3 ☐ No, not attending school – *GO to 71c* 4 ☐ Don't know 5 ☐ Refused	1 ☐ Yes, regularly attends school – *GO to 71e* 2 ☐ Attends school but not regularly, misses a lot – *GO to 71c* 3 ☐ No, not attending school – *GO to 71c* 4 ☐ Don't know 5 ☐ Refused	1 ☐ Yes, regularly attends school – *GO to 71e* 2 ☐ Attends school but not regularly, misses a lot – *GO to 71c* 3 ☐ No, not attending school – *GO to 71c* 4 ☐ Don't know 5 ☐ Refused

Section 5 – CHILDREN AND EDUCATION (Continued)

CHILD 4	CHILD 5	CHILD 6	CHILD 7
Name	Name	Name	Name
_____ Year(s) OR _____ Month(s) 1 ☐ Don't know 2 ☐ Refused	_____ Year(s) OR _____ Month(s) 1 ☐ Don't know 2 ☐ Refused	_____ Year(s) OR _____ Month(s) 1 ☐ Don't know 2 ☐ Refused	_____ Year(s) OR _____ Month(s) 1 ☐ Don't know 2 ☐ Refused
1 ☐ Male 2 ☐ Female	1 ☐ Male 2 ☐ Female	1 ☐ Male 2 ☐ Female	1 ☐ Male 2 ☐ Female
1 ☐ Yes –*GO to Check Item 9* 2 ☐ No	1 ☐ Yes – *GO to Check Item 9* 2 ☐ No	1 ☐ Yes – *GO to Check Item 9* 2 ☐ No	1 ☐ Yes – *GO to Check Item 9* 2 ☐ No
1 ☐ Child lives with his/her other parent 2 ☐ Child lives with my parent(s) or in-laws 3 ☐ Child lives with other relatives 4 ☐ Child is in foster care, group home, jail or other institution 5 ☐ Other – *Specify* ☞ _____ 6 ☐ Don't know where child lives 7 ☐ Refused	1 ☐ Child lives with his/her other parent 2 ☐ Child lives with my parent(s) or in-laws 3 ☐ Child lives with other relatives 4 ☐ Child is in foster care, group home, jail or other institution 5 ☐ Other – *Specify* ☞ _____ 6 ☐ Don't know where child lives 7 ☐ Refused	1 ☐ Child lives with his/her other parent 2 ☐ Child lives with my parent(s) or in-laws 3 ☐ Child lives with other relatives 4 ☐ Child is in foster care, group home, jail or other institution 5 ☐ Other – *Specify* ☞ _____ 6 ☐ Don't know where child lives 7 ☐ Refused	1 ☐ Child lives with his/her other parent 2 ☐ Child lives with my parent(s) or in-laws 3 ☐ Child lives with other relatives 4 ☐ Child is in foster care, group home, jail or other institution 5 ☐ Other – *Specify* ☞ _____ 6 ☐ Don't know where child lives 7 ☐ Refused
1 ☐ 0 to 6 months 2 ☐ 7 to 12 months 3 ☐ 1 to 2 years 4 ☐ 3 to 4 years 5 ☐ More than 4 years 6 ☐ Child never lived with me – *GO to 72* 7 ☐ Refused	1 ☐ 0 to 6 months 2 ☐ 7 to 12 months 3 ☐ 1 to 2 years 4 ☐ 3 to 4 years 5 ☐ More than 4 years 6 ☐ Child never lived with me – *GO to 72* 7 ☐ Refused	1 ☐ 0 to 6 months 2 ☐ 7 to 12 months 3 ☐ 1 to 2 years 4 ☐ 3 to 4 years 5 ☐ More than 4 years 6 ☐ Child never lived with me – *GO to 72* 7 ☐ Refused	1 ☐ 0 to 6 months 2 ☐ 7 to 12 months 3 ☐ 1 to 2 years 4 ☐ 3 to 4 years 5 ☐ More than 4 years 6 ☐ Child never lived with me – *GO to 72* 7 ☐ Refused
☐ 6 years or older – *Ask 71a* ☐ 3, 4 or 5 years old – *GO to 71b* ☐ Less than 3 years – *GO to 71g*	☐ 6 years or older – *Ask 71a* ☐ 3, 4 or 5 years old – *GO to 71b* ☐ Less than 3 years – *GO to 71g*	☐ 6 years or older – *Ask 71a* ☐ 3, 4 or 5 years old – *GO to 71b* ☐ Less than 3 years – *GO to 71g*	☐ 6 years or older – *Ask 71a* ☐ 3, 4 or 5 years old – *GO to 71b* ☐ Less than 3 years – *GO to 71g*
1 ☐ Yes, regularly attends school – *GO to 71e* 2 ☐ Attends school but not regularly, misses a lot – *GO to 71c* 3 ☐ No, not attending school – *GO to 71c* 4 ☐ Don't know 5 ☐ Refused	1 ☐ Yes, regularly attends school – *GO to 71e* 2 ☐ Attends school but not regularly, misses a lot – *GO to 71c* 3 ☐ No, not attending school – *GO to 71c* 4 ☐ Don't know 5 ☐ Refused	1 ☐ Yes, regularly attends school – *GO to 71e* 2 ☐ Attends school but not regularly, misses a lot – *GO to 71c* 3 ☐ No, not attending school – *GO to 71c* 4 ☐ Don't know 5 ☐ Refused	1 ☐ Yes, regularly attends school – *GO to 71e* 2 ☐ Attends school but not regularly, misses a lot – *GO to 71c* 3 ☐ No, not attending school – *GO to 71c* 4 ☐ Don't know 5 ☐ Refused

Section 5 – CHILDREN AND EDUCATION (Continued)

Please list children's names in the same order as on pages 5-1 and 5-2.	CHILD 1 Name	CHILD 2 Name	CHILD 3 Name
71b. Does *(Child's name)* **attend kindergarten, Head Start or other pre-school program?**	1☐ Yes, regularly attends a☐ Kindergarten b☐ Head Start c☐ Other pre-school (nursery school, pre-kindergarten, Even Start) GO to 71e 2☐ Enrolled, but does not attend regularly 3☐ Not enrolled 4☐ Refused	1☐ Yes, regularly attends a☐ Kindergarten b☐ Head Start c☐ Other pre-school (nursery school, pre-kindergarten, Even Start) GO to 71e 2☐ Enrolled, but does not attend regularly 3☐ Not enrolled 4☐ Refused	1☐ Yes, regularly attends a☐ Kindergarten b☐ Head Start c☐ Other pre-school (nursery school, pre-kindergarten, Even Start) GO to 71e 2☐ Enrolled, but does not attend regularly 3☐ Not enrolled 4☐ Refused
c. If not attending regularly, how long has it been since *(Child's name)* **regularly attended school?**	1☐ Less than 1 month 2☐ 1 to 3 months 3☐ 4 to 6 months 4☐ 7 months or more 5☐ Don't know 6☐ Never attended 7☐ Refused	1☐ Less than 1 month 2☐ 1 to 3 months 3☐ 4 to 6 months 4☐ 7 months or more 5☐ Don't know 6☐ Never attended 7☐ Refused	1☐ Less than 1 month 2☐ 1 to 3 months 3☐ 4 to 6 months 4☐ 7 months or more 5☐ Don't know 6☐ Never attended 7☐ Refused
d. Why doesn't *(Child's name)* **attend school or pre-school regularly?** *Mark (X) all that apply.*	1☐ Problems with transportation, no transportation 2☐ Can't register, no documents 3☐ Don't stay in one place long enough 4☐ Lack of clothing, shoes, can't keep clean 5☐ Child doesn't like school 6☐ Has to babysit younger brothers/ sisters 7☐ Has been sick, doesn't feel well 8☐ Too tired, can't get him/ her up in the morning 9☐ Other – *Specify* 10☐ Don't know 11☐ Refused	1☐ Problems with transportation, no transportation 2☐ Can't register, no documents 3☐ Don't stay in one place long enough 4☐ Lack of clothing, shoes, can't keep clean 5☐ Child doesn't like school 6☐ Has to babysit younger brothers/ sisters 7☐ Has been sick, doesn't feel well 8☐ Too tired, can't get him/ her up in the morning 9☐ Other – *Specify* 10☐ Don't know 11☐ Refused	1☐ Problems with transportation, no transportation 2☐ Can't register, no documents 3☐ Don't stay in one place long enough 4☐ Lack of clothing, shoes, can't keep clean 5☐ Child doesn't like school 6☐ Has to babysit younger brothers/ sisters 7☐ Has been sick, doesn't feel well 8☐ Too tired, can't get him/ her up in the morning 9☐ Other – *Specify* 10☐ Don't know 11☐ Refused
e. Has *(Child's name)* **ever been assigned to a special education class?**	1☐ Yes 2☐ No 3☐ Don't know 4☐ Refused	1☐ Yes 2☐ No 3☐ Don't know 4☐ Refused	1☐ Yes 2☐ No 3☐ Don't know 4☐ Refused
f. Has *(Child's name)* **repeated any grade?**	1☐ Yes 2☐ No 3☐ Don't know 4☐ Refused	1☐ Yes 2☐ No 3☐ Don't know 4☐ Refused	1☐ Yes 2☐ No 3☐ Don't know 4☐ Refused
g. Other than school or pre-school, does *(Child's name)* **receive day care?**	1☐ Yes 2☐ No 3☐ Don't know 4☐ Refused *GO to 72*	1☐ Yes 2☐ No 3☐ Don't know 4☐ Refused *GO to 72*	1☐ Yes 2☐ No 3☐ Don't know 4☐ Refused *GO to 72*
h. Where does *(Child's name)* **go for day care?**	1☐ To the shelter 2☐ To a day care center 3☐ To friends/relatives 4☐ Don't know 5☐ Refused	1☐ To the shelter 2☐ To a day care center 3☐ To friends/relatives 4☐ Don't know 5☐ Refused	1☐ To the shelter 2☐ To a day care center 3☐ To friends/relatives 4☐ Don't know 5☐ Refused

Section 5 – CHILDREN AND EDUCATION (Continued)

CHILD 4	CHILD 5	CHILD 6	CHILD 7
Name	Name	Name	Name
1 ☐ Yes, regularly attends ☞ a ☐ Kindergarten b ☐ Head Start c ☐ Other pre-school (nursery school, pre-kindergarten) GO to 71e 2 ☐ Enrolled, but does not attend regularly 3 ☐ Not enrolled 4 ☐ Refused	1 ☐ Yes, regularly attends ☞ a ☐ Kindergarten b ☐ Head Start c ☐ Other pre-school (nursery school, pre-kindergarten) GO to 71e 2 ☐ Enrolled, but does not attend regularly 3 ☐ Not enrolled 4 ☐ Refused	1 ☐ Yes, regularly attends ☞ a ☐ Kindergarten b ☐ Head Start c ☐ Other pre-school (nursery school, pre-kindergarten) GO to 71e 2 ☐ Enrolled, but does not attend regularly 3 ☐ Not enrolled 4 ☐ Refused	1 ☐ Yes, regularly attends ☞ a ☐ Kindergarten b ☐ Head Start c ☐ Other pre-school (nursery school, pre-kindergarten) GO to 71e 2 ☐ Enrolled, but does not attend regularly 3 ☐ Not enrolled 4 ☐ Refused
1 ☐ Less than 1 month 2 ☐ 1 to 3 months 3 ☐ 4 to 6 months 4 ☐ 7 months or more 5 ☐ Don't know 6 ☐ Never attended 7 ☐ Refused	1 ☐ Less than 1 month 2 ☐ 1 to 3 months 3 ☐ 4 to 6 months 4 ☐ 7 months or more 5 ☐ Don't know 6 ☐ Never attended 7 ☐ Refused	1 ☐ Less than 1 month 2 ☐ 1 to 3 months 3 ☐ 4 to 6 months 4 ☐ 7 months or more 5 ☐ Don't know 6 ☐ Never attended 7 ☐ Refused	1 ☐ Less than 1 month 2 ☐ 1 to 3 months 3 ☐ 4 to 6 months 4 ☐ 7 months or more 5 ☐ Don't know 6 ☐ Never attended 7 ☐ Refused
1 ☐ Problems with transportation, no transportation 2 ☐ Can't register, no documents 3 ☐ Don't stay in one place long enough 4 ☐ Lack of clothing, shoes, can't keep clean 5 ☐ Child doesn't like school 6 ☐ Has to babysit younger brothers/ sisters 7 ☐ Has been sick, doesn't feel well 8 ☐ Too tired, can't get him/ her up in the morning 9 ☐ Other – *Specify* ☞ 10 ☐ Don't know 11 ☐ Refused	1 ☐ Problems with transportation, no transportation 2 ☐ Can't register, no documents 3 ☐ Don't stay in one place long enough 4 ☐ Lack of clothing, shoes, can't keep clean 5 ☐ Child doesn't like school 6 ☐ Has to babysit younger brothers/ sisters 7 ☐ Has been sick, doesn't feel well 8 ☐ Too tired, can't get him/ her up in the morning 9 ☐ Other – *Specify* ☞ 10 ☐ Don't know 11 ☐ Refused	1 ☐ Problems with transportation, no transportation 2 ☐ Can't register, no documents 3 ☐ Don't stay in one place long enough 4 ☐ Lack of clothing, shoes, can't keep clean 5 ☐ Child doesn't like school 6 ☐ Has to babysit younger brothers/ sisters 7 ☐ Has been sick, doesn't feel well 8 ☐ Too tired, can't get him/ her up in the morning 9 ☐ Other – *Specify* ☞ 10 ☐ Don't know 11 ☐ Refused	1 ☐ Problems with transportation, no transportation 2 ☐ Can't register, no documents 3 ☐ Don't stay in one place long enough 4 ☐ Lack of clothing, shoes, can't keep clean 5 ☐ Child doesn't like school 6 ☐ Has to babysit younger brothers/ sisters 7 ☐ Has been sick, doesn't feel well 8 ☐ Too tired, can't get him/ her up in the morning 9 ☐ Other – *Specify* ☞ 10 ☐ Don't know 11 ☐ Refused
1 ☐ Yes 2 ☐ No 3 ☐ Don't know 4 ☐ Refused	1 ☐ Yes 2 ☐ No 3 ☐ Don't know 4 ☐ Refused	1 ☐ Yes 2 ☐ No 3 ☐ Don't know 4 ☐ Refused	1 ☐ Yes 2 ☐ No 3 ☐ Don't know 4 ☐ Refused
1 ☐ Yes 2 ☐ No 3 ☐ Don't know 4 ☐ Refused	1 ☐ Yes 2 ☐ No 3 ☐ Don't know 4 ☐ Refused	1 ☐ Yes 2 ☐ No 3 ☐ Don't know 4 ☐ Refused	1 ☐ Yes 2 ☐ No 3 ☐ Don't know 4 ☐ Refused
1 ☐ Yes 2 ☐ No 3 ☐ Don't know 4 ☐ Refused GO to 72	1 ☐ Yes 2 ☐ No 3 ☐ Don't know 4 ☐ Refused GO to 72	1 ☐ Yes 2 ☐ No 3 ☐ Don't know 4 ☐ Refused GO to 72	1 ☐ Yes 2 ☐ No 3 ☐ Don't know 4 ☐ Refused GO to 72
1 ☐ To the shelter 2 ☐ To a day care center 3 ☐ To friends/relatives 4 ☐ Don't know 5 ☐ Refused	1 ☐ To the shelter 2 ☐ To a day care center 3 ☐ To friends/relatives 4 ☐ Don't know 5 ☐ Refused	1 ☐ To the shelter 2 ☐ To a day care center 3 ☐ To friends/relatives 4 ☐ Don't know 5 ☐ Refused	1 ☐ To the shelter 2 ☐ To a day care center 3 ☐ To friends/relatives 4 ☐ Don't know 5 ☐ Refused

ASK ONLY IF HOMELESS. **72. Are any adults homeless with you, or are you by yourself?** **Moved to Section 2**	1 ☐ Respondent is by her/himself 2 ☐ Spouse 3 ☐ Other relative – *Specify* ➢ _____ 4 ☐ Nonfamily – *Specify* ➢ _____ 5 ☐ Don't know 6 ☐ Refused
ASK OF FEMALES ONLY. **73. Are you pregnant now?** **Moved to Section 4**	1 ☐ Yes 2 ☐ No 3 ☐ Don't know 4 ☐ Refused

Notes

Section 6 – EMPLOYMENT

The next questions ask about work.

74. Did you do any PAID work at all during the last 30 days (ANYTHING THAT BRINGS IN MONEY)?	1 ☐ Yes 2 ☐ No 3 ☐ Don't know } *GO to 77a* 4 ☐ Refused
75. Is this work . . .? *(Read categories and mark (X) only one response.)*	1 ☐ A job you have had for three months or more with the same employer 2 ☐ A job you have had for less than 3 months, but you expect to continue for 3 or more months 3 ☐ A temporary job (one you expect to last less than 3 months) 4 ☐ A day job, pick-up (one that lasts only a few hours, or one or two days) 5 ☐ Peddling (selling books, clothes, other items on the street) or collecting cans and bottles to exchange for money } *GO to 77a* 6 ☐ Other – *Specify* _____ 7 ☐ Don't know 8 ☐ Refused
76. During the last 30 days, how many hours did you usually work per week in paid employment in all full- or part-time jobs, including day labor?	1 ☐ Usual number of hours per week } *GO to 78* 2 ☐ Don't know 3 ☐ Refused
77a. When did you last work for pay at a full-time job or business lasting 2 consecutive weeks or more?	1 ☐ Within past week 2 ☐ Within past 6 months 3 ☐ Within past 7 months to a year ago 4 ☐ 1 to 2 years ago 5 ☐ 2 to 3 years ago 6 ☐ 3 to 4 years ago 7 ☐ 4 to 5 years ago } *GO to 77b* 8 ☐ 5 or more years ago } *GO to 77c* 9 ☐ Never worked
b. Why did you leave that job?	1 ☐ Personal, family (including pregnancy) or school 2 ☐ Health 3 ☐ Retirement or old age 4 ☐ Seasonal job completed 5 ☐ Slack work or business conditions, laid off 6 ☐ Temporary – nonseasonal job completed 7 ☐ Unsatisfactory work arrangements (hours, pay, etc.) 8 ☐ Other – *Specify* _____
c. Do you want a regular job now, either full- or part-time?	1 ☐ Yes 2 ☐ Maybe – it depends 3 ☐ No 4 ☐ Don't know
78a. Are you looking for work now?	1 ☐ Yes – *GO to 79* 2 ☐ No

Section 6 – EMPLOYMENT (Continued)

78b. What are the reasons you are not looking for work? *(Mark (X) all that apply.)*	1☐Already have a job 2☐Believes no work available in line of work or area 3☐Couldn't find any work 4☐Lacks necessary schooling, training, skills or experience 5☐Ill health, physical disability 6☐Can't arrange child care 7☐Family responsibilities 8☐In school or other training 9☐Other - Specify _____ 10☐Don't know
If "Never" marked in 77a, GO to 80. **79. Since you were 16 years old, how much of your life have you had a job or done some work for pay?**	1☐All or almost all of the time 2☐Most of the time 3☐Half of the time 4☐Some of the time 5☐Almost none of the time

Notes

Section 7 – SOURCES OF INCOME AND SERVICE USE

The next few questions ask about your income, and about your use of certain government programs and services.

80.

See attached for question rewording.

81. Over the last 30 days, what was your total income from ALL sources? *(Mark category only if respondent cannot report total income.)*

$

1 ☐ Less than $100
2 ☐ $100 to 299
3 ☐ $300 to 499
4 ☐ $500 to 699
5 ☐ $700 to 799
6 ☐ $800 to 999
7 ☐ $1,000 to 1,199
8 ☐ $1,200 to 1,499
9 ☐ $1,500 to 1,999
10 ☐ $2,000 to 2,499
11 ☐ $2,500 to 2,999
12 ☐ $3,000 or more
13 ☐ Don't know
14 ☐ Refused

82a. Do you receive food stamps now?

1 ☐ Yes
2 ☐ No
3 ☐ Don't know
4 ☐ Refused

82b. *If "Yes" in 82a, ask* – **How much do you get each month in food stamps?**

$

SECTION 7 - SOURCES OF INCOME AND SERVICE USE

The next few questions ask about your income, and about your use of certain government programs and services.

80. Have you received any money from any of these sources in the last month? *(Read categories and mark "X" all that apply.)*

	Yes	No	DK	Ref
Steady employment				
Day labor				
Aid to Families with Dependent Children (AFDC)				
General assistance (CA, PA, HR, GR)				
Social Security (old age, survivors, and retirement)				
Social Security Disability Insurance (SSDI)				
Supplemental Security Income (SSI)				
Veteran's disability payments				
Veteran's pension (not disability related)				
Other pensions				
Other survivor benefits				
Private disability insurance				
Unemployment compensation				
Child support				
Other spousal benefits				
Spouse				
Parents				
Other relatives				
Friends (includes boyfriends or girlfriends)				
Sale of personal belongings				
Asking for money on the streets				
Blood or plasma center				
Illegal activities				
Other – Specify _____				
No money sources from above categories				
No income				

Section 7 – SOURCES OF INCOME AND SERVICE USE (Continued)

FR INSTRUCTION: Mark 83a and b "Yes" for each corresponding benefit program.

83a. I'm going to read you a list of government benefit programs. Have you ever applied for . . . ?		**83b.** *If all "No" in 83a., GO to 84.* *If "Yes" in 83a. ask* – Did you ever receive benefits?	**83c.** If 34 marked "No, GO to 84. If "Yes in 83b. ask - Were you receiving assistance or benifits from (Program) when you had to leave the last permanent place you stayed?	**83d.** If "Yes" in 83c., ask - Did you stop receiving this benefit from (Program) within the year before you had to leave the last permanent place you stayed.	**83e.** If "Yes in 83d., ask - Why did you stop receiving this benefit from (Program)?
(1) Aid to Families with Dependent Children	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1☐ Program ended 2☐ No longer eligible 3☐ No longer needed 4☐ Other reason 5☐ Don't know
(2) Food stamps	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1☐ Program ended 2☐ No longer eligible 3☐ No longer needed 4☐ Other reason 5☐ Don't know
(3) General assistance	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1☐ Program ended 2☐ No longer eligible 3☐ No longer needed 4☐ Other reason 5☐ Don't know
(4) Supplemental Security Income	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1☐ Program ended 2☐ No longer eligible 3☐ No longer needed 4☐ Other reason 5☐ Don't know
(5) Social Security Disability Income	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1☐ Program ended 2☐ No longer eligible 3☐ No longer needed 4☐ Other reason 5☐ Don't know
(6) Medicare	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1☐ Program ended 2☐ No longer eligible 3☐ No longer needed 4☐ Other reason 5☐ Don't know
(7) Medicaid	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1☐ Program ended 2☐ No longer eligible 3☐ No longer needed 4☐ Other reason 5☐ Don't know
(8) Veterans (VA) benefits	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1 ☐ Yes 2 ☐ No 3 ☐ Don't know	1☐ Program ended 2☐ No longer eligible 3☐ No longer needed 4☐ Other reason 5☐ Don't know

Section 7 – SOURCES OF INCOME AND SERVICE USE (Continued)

84a. Now I am going to ask you about another list of services. Which of the following services have you used in the last seven days? (Read all categories. Each day column should have at least one "X". If not, correct answers.)

	Su	M	T	W	Th	F	Sa
☐ Free or almost free clothing							
☐ Drop–in centers							
☐ Free public transportation (e.g., bus, subway, or cab tokens)							
☐ Day care							
☐ Counseling (for employment, parenting, self–esteem – not for mental health							
☐ Emergency shelters							
☐ Transitional housing							
☐ Soup kitchen or meal program							
☐ Mobile food program							
☐ Health care							
☐ Mental health services							
☐ Substance abuse services							
☐ Migrant housing used in the off season to provide temporary shelter							
☐ Free or reduced price school breakfasts and/or lunches							
☐ WIC (Women, Infants, and Children nutrition program)							
☐ Other – Specify _____							
☐ None of the above							
☐ Refused							

84b. (Read categories not marked in 84a. and ask) Have you ever used ... ?

84c. When was the last time you used ... ?

	Less than one month ago	One month ago	More than a month ago	More than a year ago
☐ Free or almost free clothing				
☐ Drop–in centers				
☐ Free public transportation (e.g., bus, subway, or cab tokens)				
☐ Day care				
☐ Counseling (for employment, parenting, self–esteem – not for mental health				
☐ Emergency shelters				
☐ Transitional housing				
☐ Soup kitchen or meal program				
☐ Mobile food program				
☐ Health care				
☐ Mental health services				
☐ Substance abuse services				
☐ Migrant housing used in the off season to provide temporary shelter				
☐ Free or reduced price school breakfasts and/or lunches				
☐ WIC (Women, Infants, and Children nutrition program)				
☐ Other – Specify				
☐ None of the above				
☐ Refused				

CHECK ITEM

Are respondents younger than 18 years old?

1 ☐ **Yes – GO to 90**
2 ☐ **No**

Section 8 – VETERAN STATUS

The next questions ask about experiences in the armed services.

85.	Have you ever been on active-duty military service in the Armed Forces of the United States? Do not include time served in the Reserves or National Guard.	1☐ Yes, active duty 2☐ No 3☐ Don't know 4☐ Refused } *GO to 90*
86.	In total, how many years of active-duty military service have you had?	1☐ _____ Years
87.	**Were you ever stationed in a war zone?**	1☐ Yes 2☐ No
88.	**During your military service, were you ever in or exposed to combat?**	1☐ Yes 2☐ No 3☐ Don't know 4☐ Refused
89.	**Have you ever used a medical facility that was operated by the VA for overnight hospital care, outpatient visits, or for nursing home, convalescent home, or admissions for long-term care?**	1☐ Yes 2☐ No 3☐ Don't know 4☐ Refused

a Do you currently receive veterans benefits (VA)?

____ Yes Go to d ____ Don't Know
____ No ____ Refused

b Are you eligible to receive VA benefits?

____ Yes Go to d ____ Don't Know
____ No ____ Refused

c Why are you not eligible to receive VA benefits?

_____

d Other than programs at VA medical centers, have you participated in programs that serve veterans who are homeless?

____ Yes ____ Don't Know
____ No Go to 90 ____ Refused

e In which of the following programs did you participated? (Read categories and mark (X) all that apply.)

___ Compensated work therapy program
___ Dom program (domiciliary care program)
___ Homeless shelters for veterans not run by the VA
___ Veterans Center drop-in center
___ Stand down
___ Other, specify_____

Section 9 – FOOD INTAKE

These questions ask about the food you eat and where you get your food.

90. Which of the following best describes your situation in terms of food you eat . . .? *(Read categories and mark (X) one answer.)*	1☐ Get enough of the kinds of foods you want to eat 2☐ Get enough, but not always what you want to eat 3☐ Sometimes not enough to eat 4☐ Often not enough to eat 5☐ Don't know 6☐ Refused
91. How many times do you usually eat in a day?	1☐ Less than once per day 2☐ Once per day 3☐ Twice per day 4☐ Three times per day 5☐ Four times per day 6☐ Five times per day 7☐ More than five times per day 8☐ Don't know 9☐ Refused

Were you ever hungry but didn't eat because you couldn't afford enough food?

_____ Yes
_____ No - Skip
_____ Don't know

Did this happen in the last 30 days?

_____ Yes
_____ No
_____ Don't know

In the last 30 days, about how many days were you hungry but didn't eat because your couldn't afford enough food?

_____ Number of days
_____ Don't know

92a. In the last seven days, since last (Day of interview), did you ever go a whole day without anything at all to eat?	1☐ Yes 2☐ No 3☐ Don't know 4☐ Refused } *GO to* 93
92b. **How many days last week did you go without anything to eat for the whole day?**	1☐ _____ Number of days 2☐ Don't know 3☐ Refused

93. In the last 30 days, did you ever go a whole day without anything at all to eat?

___ Yes ___ Don't know

___ No ___ Refused

Section 9 – FOOD INTAKE

94a Have you ever eaten in a soup kitchen?

____ Yes
____ No
____ Don't Know
____ Refused

Go to 94c

94b When was the last time you ate at a soup kitchen?

☐ Today
☐ _____ days ago
☐ _____ weeks ago
☐ _____ months ago
☐ _____ More than a year ago
☐ _____ Never
☐ _____ Don't know
☐ _____ Refused

94c Have you ever gotten food from a food pantry?

____ Yes
____ No
____ Don't Know
____ Refused

Go to 94e

94d When was the last time you got food from a food pantry?

☐ Today
☐ _____ days ago
☐ _____ weeks ago
☐ _____ months ago
☐ _____ More than a year ago
☐ _____ Never
☐ _____ Don't know
☐ _____ Refused

94e Have you ever gotten food from a mobile food van?

____ Yes
____ No
____ Don't Know
____ Refused

Go to 96

94d When was the last time you got food from a mobile food van?

☐ Today
☐ _____ days ago
☐ _____ weeks ago
☐ _____ months ago
☐ _____ More than a year ago
☐ _____ Never
☐ _____ Don't know
☐ _____ Refused

Section 9 – FOOD INTAKE (Continued)

95a. Over the last seven days since last (day of interview), on which days did you get food from the following places? (Read categories.)

		Su	M	T	W	Th	F	Sa
1 ☐	In my own house, apartment, or room (includes foster and group homes)							
2 ☐	Soup kitchens (including free bag lunches and dinner)							
3 ☐	Shelter where you live (shelter provides)							
4 ☐	Shelter where you live (you cook)							
5 ☐	Food pantry							
6 ☐	Food wagon (free food)							
7 ☐	Food vouchers							
8 ☐	Street vendor (you pay)							
9 ☐	Friend's or relative's place							
10 ☐	Grocery store							
11 ☐	Restaurant where you pay							
12 ☐	Restaurant (back door, handouts)							
13 ☐	Handouts from people passing by							
14 ☐	Trash cans							
15 ☐	Other – Specify _____							
16 ☐	None							
17 ☐	Refused							

(Ask if "Yes" is marked in 94a or soup kitchen in marked in 95a)

b. Can you tell me the names of the soup kitchens you have used in the last 7 days?

_____

_____

_____

_____

Notes

SECTION 10 - CURRENT PHYSICAL HEALTH (CONTINUED)

The next questions ask about your health and medical care.

96. Do you have any of the following medical conditions?
(Read categories and mark "X" all that apply.)

	Yes	No	DK	Ref
Sugar in your blood (diabetes)				
Anemia (poor blood)				
High blood pressure				
Heart disease/stroke				
Problems with your liver				
Arthritis, rheumatism, joint problems				
Chest infections, cold, cough, bronchitis				
Pneumonia				
Tuberculosis				
Skin disease, skin infection, skin sores, skin ulcers				
Lice, scabies, other similar infestations				
Cancer				
Problem walking, lost limb, other handicap				
Gonorrhea, syphilis, herpes, chlamydia, other STDs (NOT AIDS)				
Test positive for HIV				
Have AIDS				
Use drugs intravenously (shoot up)				
Other – Specify _____				
None				
Don't know				
Refused				

SECTION 10 - CURRENT PHYSICAL HEALTH (CONTINUED)

97. When was the last time you were treated or examined by a physician/doctor for health health problems, including routine checkups?

- ☐ Within the past 12 months
- ☐ ____ Number of years ago
- ☐ Never
- ☐ Don't Know
- ☐ Refused

Go to 106

98. Who paid for your visit?

- ☐ No one paid the bill
- ☐ Health Care for the Homeless clinic
- ☐ Migrant health care facility
- ☐ Other free clinic
- ☐ Veterans' Affairs (VA)
- ☐ Medicaid/Welfare/Public Insurance
- ☐ Private insurance
- ☐ Other - Specify _____
- ☐ I paid myself
- ☐ Don't Know
- ☐ Refused

99. In the last year, have you gotten medical care from any of the following places? (Read categories and mark (X) all that apply.

	Yes	No	Don't know	Refused
OUTPATIENT CARE				
a. A hospital emergency room	1☐	2☐	3☐	4☐
b. A hospital clinic	1☐	2☐	3☐	4☐
c. A VA hospital as an inpatient	1☐	2☐	3☐	4☐
d. Any other hospital as an inpatient	1☐	2☐	3☐	4☐
e. A VA clinic	1☐	2☐	3☐	4☐
f. A community health clinic	1☐	2☐	3☐	4☐
g. A migrant health care facility	1☐	2☐	3☐	4☐
h. Health Care for the homeless clinic	1☐	2☐	3☐	4☐
INPATIENT CARE				
i. A doctor or nurse in a shelter or soup kitchen	1☐	2☐	3☐	4☐
j. A private doctor's office (not in a hospital or clinic)	1☐	2☐	3☐	4☐

SECTION 10 - CURRENT PHYSICAL HEALTH (CONTINUED)

100.	All together, how many times have you received medical treatment in the past year, from all sources combined?	☐ Never ☐ Once ☐ 2-3 times ☐ 4-10 times ☐ 11 or more times ☐ Don't Know ☐ Refused
CHECK ITEM 12	Are all responses in 99 marked "No" and 100 marked 2-5?	☐ Yes - Reask 99 and 100 to to resolve discrepancies ☐ No
101a.	Are you suppose to be taking any prescribed medication now?	☐ Yes ☐ No ☐ Don't Know - Go to 102 ☐ Refused
101b.	Are you able to take the medication that has been prescribed for you as your doctor directed?	☐ Yes, always taken as directed ☐ Sometimes run out and do not refill prescription when I should ☐ Sometimes lose medicine ☐ Sometimes forget to take medicine ☐ Others, Specify_____ ☐ Don't know ☐ Refused
102.	Have you needed to see a doctor in the last year but not been able to?	☐ Yes ☐ No ☐ Don't Know ☐ Refused
103.	What do you do when you are sick and cannot see a doctor? (Read all categories and mark (X) all that apply.)	☐ Buy aspirin or other remedies at a drug store ☐ Borrow medicine from a friend ☐ Get medicine at a shelter ☐ Other - Specify_____ ☐ Nothing ☐ Don't Know ☐ Refused
104.	When was the last time you were treated by a dentist?	☐ Within the past 12 months ☐ ____ Number of years ago ☐ Never --------- ☐ Don't Know Go to 106 ☐ Refused -------

SECTION 10 - CURRENT PHYSICAL HEALTH (CONTINUED)

105.	Who paid for your visit?	☐ No one paid the bill ☐ Health Care for the Homeless clinic ☐ Migrant health care facility ☐ Other free clinic ☐ Veterans' Affairs (VA) ☐ Medicaid/Welfare/Public Insurance ☐ Private insurance ☐ Other - Specify _____ ☐ I paid myself ☐ Don't Know ☐ Refused
106.	Have you needed to see a dentist in the last year but were not able to?	☐ Yes ☐ No ☐ Don't Know ☐ Refused
107.	Are you currently on medical assistance (e.g., Medicaid, Medical, Medically Needy, public assistance medical care)?	☐ Yes ☐ Not yet, but applied ☐ No ☐ Don't Know ☐ Refused
108.	(Ask only if children living with or in custody of respondent) When was the last time your child(ren) was/were examined or treated by a physician/doctor for physical health problems, including routine checkups?	☐ Within the past 12 months ☐ 1 - 2 years ago ☐ More than 2 years ago ☐ Never ------- ☐ Don't Know Go to 112 ☐ Refused-------
109.	Who paid for their visit?	☐ No one paid the bill ☐ Health Care for the Homeless clinic ☐ Migrant health care facility ☐ Other free clinic ☐ Veterans' Affairs (VA) ☐ Medicaid/Welfare/Public Insurance ☐ Private insurance ☐ Other - Specify _____ ☐ I paid myself ☐ Don't Know ☐ Refused

SECTION 10 - CURRENT PHYSICAL HEALTH (CURRENT)

110. In the last year, have they gotten medical care from any of the following places? (Read categories and mark (X) all that apply.	Yes	No	Don't know	Refused
OUTPATIENT CARE				
a. A hospital emergency room	1 ☐	2 ☐	3 ☐	4 ☐
b. A hospital clinic	1 ☐	2 ☐	3 ☐	4 ☐
c. Any hospital as an inpatient	1 ☐	2 ☐	3 ☐	4 ☐
d. A community health clinic	1 ☐	2 ☐	3 ☐	4 ☐
e. A migrant health care facility	1 ☐	2 ☐	3 ☐	4 ☐
f. Health Care for the homeless clinic	1 ☐	2 ☐	3 ☐	4 ☐
INPATIENT CARE				
i. A doctor or nurse in a shelter or soup kitchen	1 ☐	2 ☐	3 ☐	4 ☐
j. A private doctor's office (not in a hospital or clinic)	1 ☐	2 ☐	3 ☐	4 ☐

111a. Are they suppose to be taking any prescribed medication now?	☐ Yes ☐ No ☐ Don't Know - Go to 102 ☐ Refused
111b. Are they able to take the medication that has been prescribed for you as your doctor directed?	☐ Yes, always taken as directed ☐ Sometimes run out and do not refill prescription when I should ☐ Sometimes lose medicine ☐ Sometimes forget to take medicine ☐ Others, Specify_____ ☐ Don't know ☐ Refused
112. Have they needed to see a doctor in the last year but not been able to?	☐ Yes ☐ No ☐ Don't Know ☐ Refused

SECTION 10 - CURRENT PHYSICAL HEALTH (CONTINUED)

113.	What do you do when they are sick and cannot see a doctor? (Read all categories and mark (X) all that apply.)	☐ Buy aspirin or other remedies at a drug store ☐ Borrow medicine from a friend ☐ Get medicine at a shelter ☐ Other - Specify_____ ☐ Nothing ☐ Don't Know ☐ Refused
114.	When was the last time your child(ren) were treated by a dentist?	☐ Within the past 12 months ☐ ____ Number of years ago ☐ Never --------- ☐ Don't Know Go to 106 ☐ Refused -------
115.	Who paid for their visit?	☐ No one paid the bill ☐ Health Care for the Homeless clinic ☐ Migrant health care facility ☐ Other free clinic ☐ Veterans' Affairs (VA) ☐ Medicaid/Welfare/Public Insurance ☐ Private insurance ☐ Other - Specify _____ ☐ I paid myself ☐ Don't Know ☐ Refused
116.	Have they needed to see a dentist in the last year but were not able to?	☐ Yes ☐ No ☐ Don't Know ☐ Refused
117.	Are they currently on medical assistance (e.g., Medicaid, Medical, Medically Needy, public assistance medical care)?	☐ Yes ☐ Not yet, but applied ☐ No ☐ Don't Know ☐ Refused

Section 11 – VICTIMIZATION AND IMPRISONMENT

The next questions ask about things that have happened to you.

118. Have you ever in your lifetime –	Yes	No	Don't know	Refused
a. Spent more than five days in a city or county jail?	1 ☐	2 ☐	3 ☐	4 ☐
b. Spent more than 5 days in a military jail or lock-up.				
c. Served time in State or Federal prison?	1 ☐	2 ☐	3 ☐	4 ☐
d. Spent time in juvenile detention before you were 18?	1 ☐	2 ☐	3 ☐	4 ☐

CHECK ITEM 12: If 34 is marked "No" (respondent has never been homeless) or blank, go to 120.

119. At any time when you were (homeless/ without permanent housing), did anyone ever do any of the following to you--	Yes	No	Don't know	Refused
a. Steal money or things directly from you, while you were there?	1 ☐	2 ☐	3 ☐	4 ☐
b. Steal money or things from your bags, locker, etc. (while you were gone)?	1 ☐	2 ☐	3 ☐	4 ☐
c. Physically assault you, beat you up?	1 ☐	2 ☐	3 ☐	4 ☐
d. Sexually assault you, rape you?	1 ☐	2 ☐	3 ☐	4 ☐

120. From the time you were a baby until you were 16, did anyone you live with (parent, step-parent, brother or sister, step-brother or -sister, parent's boy or girlfriend, etc.), ever –	Yes	No	Don't know	Refused
a. Leave you without adequate food or shelter?	1 ☐	2 ☐	3 ☐	4 ☐
b. Physically abuse you, to cause physical injury?	1 ☐	2 ☐	3 ☐	4 ☐
c. Force you or pressure you to do sexual acts that you did not want to do?	1 ☐	2 ☐	3 ☐	4 ☐

Notes

FORM HRM(R)-560(X) (6-7-95)

SECTION 12 - MENTAL HEALTH

The next few questions ask about mental health conditions that were not the direct result of drug or alcohol use.

121a. Have you ever had a significant period (that was not a direct result of drug/alcohol use), in your life in which you have... ?

121b. If all "No" in 121a., go to 125a.

If "Yes" in 121a, ask: How recently did you experience (read items)...?

Use codes below to answer 121b.

1 – Within the past 30 days
2 – 1–6 months ago
3 – 7–12 months ago
4 – 13–24 months ago
5 – 25–48 months ago (3–4 years)
6 – More than 4 years
7 – Don't know
99 – Refused

	Yes	No	Code
(1) Experienced serious depression	☐	☐	
(2) Experienced serious anxiety or anxiety or tension	☐	☐	
(3) Experienced hallucinations, that is, heard voices or seen things that you could not control or that others could not hear or see	☐	☐	
(4) Experienced trouble understanding, concentrating, or remembering	☐	☐	
(5) Experienced trouble controlling violent behavior	☐	☐	
(6) Experienced serious thoughts of suicide	☐	☐	
(7) Attempted suicide	☐	☐	
(8) Taken prescribed medication for any psychological/emotional problems	☐	☐	

SECTION 12- MENTAL HEALTH (CONTINUED)		
122.	In the past 30 days, on how many days have you experienced these things?	☐ ____ Number of days ☐ None ☐ Don't know — Go to 125 ☐ Refused ____
123.	(SHOW Flashcard) During the past 30 days, how much have you been troubled or bothered by these experiences? (Mark (X) only one.)	☐ Not at all ☐ Slightly (a little) ☐ Moderately ☐ Considerably ☐ Extremely ☐ Don't know ☐ Refused _____
124.	(SHOW Flashcard) How important to you now is the treatment or counseling for these psychological problems (Mark (X) only one.)	☐ Not at all ☐ Slightly (a little) ☐ Moderately ☐ Considerably ☐ Extremely ☐ Don't know ☐ Refused _____
125a.	Have you ever received outpatient treatment or counseling for emotional or mental problems (from a clinic or a private doctor)?	☐ Yes ☐ No ☐ Don't know — Go to 126 ☐ Refused

SECTION 12 - MENTAL HEALTH - (CONTINUED)

125b.	In your lifetime, how many times did you receive this outpatient treatment or counseling for emotional or mental conditions?	☐ 0-4 weeks ☐ 1-6 months ☐ 7-12 months ☐ 13-24 months ☐ More than 2 years ago ☐ Don't know ☐ Refused
125c.	(If ever homeless), Did you receive treatment before or after you became homeless for the first time?	☐ Before ☐ After ☐ Don't know ☐ Refused
126a.	Have you ever been HOSPITALIZED for emotional or mental problems?	☐ Yes ☐ No ------- ☐ Don't know Go to 127 ☐ Refused ----
	(DO NOT ASK IF 34 MARKED "No")	
b.	In your lifetime, how many times did you receive this inpatient treatment or counseling for emotional or mental conditions?	☐ 0-4 weeks ☐ 1-6 months ☐ 7-12 months ☐ 13-24 months ☐ More than 2 years ago ☐ Don't know ☐ Refused
c.	(If homeless), Did you receive treatment before or after you became homeless for the first time?	☐ Before ☐ After ☐ Don't know ☐ Refused

Section 13 – CHEMICAL DEPENDENCY

These questions ask about alcohol and drug use.

127a. During your lifetime, have there been times when you have used –

	Yes	No
(1) Beer, wine, or liquor 3 or more times a week?	☐	☐
(2) Beer, wine, or liquor to get drunk 3 or more times a week?	☐	☐

b. *If "Yes" in 127a, ask* – **When was the most recent time you used –**

	Code
(1) Beer, wine, or liquor 3 or more times a week?	
(2) Beer, wine, or liquor to get drunk 3 or more times a week?	

Use codes below to answer 127b.

1 — Within the past 30 days
2 — 1–6 months ago
3 — 7–12 months ago
4 — 13–24 months ago
5 — 25–48 months ago (3–4 years)
6 — More than 4 years
7 — Don't know
99 — Refused

CHECK ITEM 14

Check item is deleted.

128. See attached page for revised question.

129. How much money did you spend on alcohol in the past 30 days? $_____

130. See attached page for revised question.

131. *(SHOW FLASHCARD)* In the past 30 days, how troubled or bothered were you by beer, wine, or liquor problems?

1 ☐ Not at all
2 ☐ Slightly (a little)
3 ☐ Moderately
4 ☐ Considerably
5 ☐ Extremely
6 ☐ Don't know
7 ☐ Refused

132. *(SHOW FLASHCARD)* How important to you is treatment for beer, wine, or liquor problems that you are not getting? (Need for alcohol-related treatment, not general therapy.)

1 ☐ Not at all
2 ☐ Slightly (a little)
3 ☐ Moderately
4 ☐ Considerably
5 ☐ Extremely
6 ☐ Don't know
7 ☐ Refused

Section 13 – CHEMICAL DEPENDENCY

These questions ask about alcohol and drug use.

128a.

On how many different days did you have one or more drinks of beer, wine, or liquor in the past 30 days?

_____ Number of days

b.

On the days when you drank beer, wine, or liquor in the past 30 days, about how many drinks did you usually have in a single day?

Section 13 – CHEMICAL DEPENDENCY (Continued)

130a. In the past 30 days, did you...

	Yes	No
Crave beer, wine, or liquor	☐	☐
Suffer adverse effects from beer, wine, or liquor	☐	☐
Have withdrawal symptoms from beer, wine, or liquor such as seizures, shaking, or seeing or hearing things that aren't really there	☐	☐
Desire to stop drinking but could not	☐	☐

130b. If all categories marked no, go to 131. (For categories marked yes) About how many days did you ... ?

	Number of days	Every day
Crave beer, wine, or liquor	_____	☐
Suffer adverse effects from beer, wine, or liquor	_____	☐
Have withdrawal symptoms from beer, wine, or liquor such as seizures, shaking, or seeing or hearing things that aren't really there	_____	☐
Desire to stop drinking but could not	_____	☐

Section 13 – CHEMICAL DEPENDENCY (Continued)

133. Because of drinking have you ever... ?
(Read categories and mark (X) one on each line.)

	Yes	No	Don't know	Refused
a. Lost consciousness, passed out	1 ☐	2 ☐	3 ☐	4 ☐
b. Had blackouts where you don't remember things	1 ☐	2 ☐	3 ☐	4 ☐
c. Experienced tremors or shaking	1 ☐	2 ☐	3 ☐	4 ☐
d. Experienced seizures, convulsions	1 ☐	2 ☐	3 ☐	4 ☐
e. Attended a meeting of Alcoholics Anonymous	1 ☐	2 ☐	3 ☐	4 ☐
f. Not been able to stop drinking when you wanted to	1 ☐	2 ☐	3 ☐	4 ☐
g. Experienced problems between you and your wife, husband, parent, or other near relative	1 ☐	2 ☐	3 ☐	4 ☐
h. Been arrested, even for a few hours, because of behavior due to drinking (e.g., drunk driving, getting in fights, being "drunk and disorderly")	1 ☐	2 ☐	3 ☐	4 ☐
i. Found that your usual number of drinks had much less effect on you than it once did	1 ☐	2 ☐	3 ☐	4 ☐
j. Taken a drink to get over any of the bad aftereffects of drinking	1 ☐	2 ☐	3 ☐	4 ☐
k. Continued to drink even though it was causing trouble with your family, friends, or work	1 ☐	2 ☐	3 ☐	4 ☐

134.

See attached page for revised question.

135. In your lifetime, how many times have you been treated for alcohol abuse?

1 ☐ Never – *GO to 140*
2 ☐ _____ Number of times
3 ☐ Too many to remember
4 ☐ Don't know
5 ☐ Refused

136a. Have you ever received INPATIENT treatment, (including detox) for problems with alcohol?

1 ☐ Yes
2 ☐ No
3 ☐ Don't know } *GO to 138*
4 ☐ Refused

b. *If "Yes" in 136a,* **Was it a . . .?** *(Read categories and mark (X) all that apply.)*

1 ☐ Hospital based detox
2 ☐ Other inpatient detox
3 ☐ Hospital based inpatient other than detox
4 ☐ Jail or prison program
5 ☐ Therapeutic community
6 ☐ Halfway house
7 ☐ Juvenile treatment program
8 ☐ Other short-term residential
9 ☐ Other long-term residential
10 ☐ Other – *Specify* _____
11 ☐ Does not recall type of treatment
12 ☐ Don't know
13 ☐ Refused

137. How long ago was the last of these inpatient treatments (including detox) for alcohol problems?

1 ☐ Within the past month
2 ☐ At least 1 month but less than 6 months ago
3 ☐ At least 6 months but less than 12 months ago
4 ☐ At least 1 year but less than 2 years ago
5 ☐ At least 2 years ago
6 ☐ Don't know
7 ☐ Refused

Section 13 – CHEMICAL DEPENDENCY (Continued)

134a.

About how old were you when you first started drinking, not counting small tastes or sips of beer, wine, or liquor?

1 ☐___Age
2 ☐Never
3 ☐Don't know
4 ☐Refused

134b.

About how old were you when you first drank more than 5 drinks in one day on a regular basis (3 or more time in a week)?

1 ☐___Age
2 ☐Never
3 ☐Don't know
4 ☐Refused

Section 13 – CHEMICAL DEPENDENCY (Continued)

138a. Have you ever received OUTPATIENT treatment for problems with alcohol?	1 ☐ Yes 2 ☐ No 3 ☐ Don't know } *GO to 140* 4 ☐ Refused
b. *If "Yes" in 138a,* **Was it a . . .?** *(Read categories and mark (X) all that apply.)*	1 ☐ Outpatient detoxification 2 ☐ Outpatient alcohol free 3 ☐ Employee assistance program 4 ☐ Individual counselor, psychologist, or psychiatrist 5 ☐ Alcoholics Anonymous 6 ☐ Other self-help group 7 ☐ Other – *Specify* _____ 8 ☐ Does not recall type of treatment 9 ☐ Don't know 10 ☐ Refused
139. How long ago was the last of these outpatient treatments (including detox) for alcohol problems?	1 ☐ Within the past month 2 ☐ At least 1 month but less than 6 months ago 3 ☐ At least 6 months but less than 12 months ago 4 ☐ At least 1 year but less than 2 years ago 5 ☐ At least 2 years ago 6 ☐ Don't know 7 ☐ Refused

Notes

Section 13 – CHEMICAL DEPENDENCY (Continued)

140a. During your lifetime, have there been times when you used (name drug) regularly? (Regular use is a frequency of 3 or more times in one week.)			140b. If all "No" in 140a., go to 151. If "Yes" in 140a, ask: How recently did you regularly use (read items)...? Use codes below to answer 140b. 1 – Within the past 30 days 2 – 1–6 months ago 3 – 7–12 months ago 4 – 13–24 months ago 5 – 25–48 months ago (3–4 years) 6 – More than 4 years 7 – Don't know 99 – Refused	140c. If no drugs marked code 1 in 140b, go to 144. (For each drug with code 1, in 140b ask) In the past 30 days, on how many days did you use... ?
	Yes	No	Code	Number of days
(1) Marijuana/hashish (pot/grass/reefer/THC)	☐	☐		
(2) Inhalants (glue, amyl nitrite, poppers, aerosol sprays)	☐	☐		
(3) Crack	☐	☐		
(4) Powdered cocaine (other than crack)	☐	☐		
(5) Heroin	☐	☐		
(6) Methadone	☐	☐		
(7) Other opiates/analgesics (Darvon, Demerol, Talwin, Talacen)	☐	☐		
(8) Stimulants (amphetamines, Preludin, methamphetamines, uppers, speed)	☐	☐		
(9) Barbiturates (downers)	☐	☐		
(10) Other sedatives (sleeping pills, Seconal)	☐	☐		
(11) Hypnotics/tranquilizers (Librium, Valium, benzodiazepine)	☐	☐		
(12) Hallucinogens (LSD, PCP, peyote, mescaline, ecstasy)	☐	☐		
(13) Any other drug, not including alcohol as a drug	☐	☐		

SECTION 13 - CHEMICAL DEPENDENCY (CONTINUED)

141. See attached page for revised question.

142. (SHOW FLASHCARD)
In the past 30 days, how troubled or bothered were you by drug problems?

- ☐ Not at all
- ☐ Slightly (a little)
- ☐ Moderately
- ☐ Considerably
- ☐ Extremely
- ☐ Don't know
- ☐ Refused

143. (SHOW FLASHCARD)
How important to you is the treatment for drug problems that you are not now getting? (Need for drug-related treatment, not general therapy.)

- ☐ Not at all
- ☐ Slightly (a little)
- ☐ Moderately
- ☐ Considerably
- ☐ Extremely
- ☐ Don't know
- ☐ Refused

144. In your lifetime --

	Yes	No	Don't know	Refused
a. Have you used more than one drug at a time?	1☐	2☐	3☐	4☐
b. Have you had "blackouts" or "flashbacks" as a result of drug use?	1☐	2☐	3☐	4☐
c. Do your friends or relatives know or suspect you used drugs?	1☐	2☐	3☐	4☐
d. Have you ever lost friends because of your use of drugs?	1☐	2☐	3☐	4☐
e. Have you ever neglected your family or missed work because of your use of drugs?	1☐	2☐	3☐	4☐
f. Have you engaged in illegal activities in order to obtain drugs?	1☐	2☐	3☐	4☐
g. Have you ever experienced withdrawal symptoms as a result of heavy drug intake?	1☐	2☐	3☐	4☐
h. Have you had medical problems as a result of your drug use (e.g., memory loss, hepatitis, convulsions, bleeding, etc.)?	1☐	2☐	3☐	4☐

145. See attached page for revised question.

146. In your lifetime, how many times have you been treated for drug abuse? (If treated for both alcohol and drug problems during the same treatment, count it as twice.)

- ☐ Never, - Go to 151a
- ☐ ____ Number of times
- ☐ Too many to remember
- ☐ Don't know
- ☐ Refused

Section 13 – CHEMICAL DEPENDENCY (Continued)

141a. In the past 30 days, did you...

	Yes	No
Crave drugs	☐	☐
Suffer adverse effects from drugs	☐	☐
Have withdrawal symptoms from drugs	☐	☐
Desire to stop using drugs but could not	☐	☐

141b. If all categories marked no, go to 142. (For categories marked yes) About how many days did you ... ?

	Number of days	Every day
Crave drugs	_____	☐
Suffer adverse effects from drugs	_____	☐
Have withdrawal symptoms from drugs	_____	☐
Desire to stop using drugs but could not	_____	☐

Section 13 – CHEMICAL DEPENDENCY (Continued)

145a.

About how old were uou when you first started using drugs?

1 ☐___Age
2 ☐Never
3 ☐Don't know
4 ☐Refused

---

b.

About how old were you when you first started using drugs regularly? (Regular use is a frequency of 3 or more times in one week)

1 ☐___Age
2 ☐Never
3 ☐Don't know
4 ☐Refused

SECTION 13 - CHEMICAL DEPENDENCY

147a.	Have you ever received INPATIENT treatment or counseling for emotional or mental problems (from a clinic or a private doctor)?	☐ Yes ☐ No ---------- ☐ Don't know Go to 149a ☐ Refused ------
b.	If "Yes" in 147a, Was it a...? (Read categories and mark (X) all that apply).	☐ Hospital based detox ☐ Other inpatient detox ☐ Hospital based inpatient other than detox ☐ Jail or prison program ☐ Therapeutic community ☐ Halfway House ☐ Juvenile treatment program ☐ Other short-term residential ☐ Other long-term residential ☐ Other - Specify _____ ☐ Does not recall type of treatment ☐ Don't know ☐ Refused
148.	How long ago was the last of these inpatient treatments (including detox) for drug problems?	☐ Within the past month ☐ At least 1 month but less than 6 months ago ☐ At least 6 mths but less than 12 months ago ☐ At least 1 year but less than 2 years ago ☐ At least 2 years ago ☐ Don't know ☐ Refused
149a.	Have you ever received OUTPATIENT treatment for problems with drugs?	☐ Yes ☐ No ---------- ☐ Don't Know Go to 151a ☐ Refused -------
b.	If "Yes" in 149a, Was it a...? (Read categories and mark (X) all that apply).	☐ Outpatient detoxification ☐ Methadone detoxification ☐ Methadone maintenance ☐ Other outpatient detoxification ☐ Outpatient drug free program ☐ Employee assistance program ☐ Individual counselor, psychologist, or psychiatrist ☐ Narcotics Anonymous ☐ Other self-help group ☐ Other - Specify _____ ☐ Does not recall type of treatment ☐ Don't know ☐ Refused
150.	How long ago was the last of these outpatient treatments (including detox) for drug problems?	☐ Within the past month ☐ At least 1 month but less than 6 months ago ☐ At least 6 mths but less than 12 months ago ☐ At least 1 year but less than 2 years ago ☐ At least 2 years ago ☐ Don't know ☐ Refused

Section 14 – RESPONDENT COMMENTS

151a. Can you tell us any general thoughts or comments on the availability and quality of services in your area?

_____

_____

_____

_____

_____

_____

_____

_____

b. Are there programs of services that you think need to be changed?

1 ☐ No
2 ☐ Yes – **Generally speaking, what changes do you think are needed?**

_____

_____

_____

_____

_____

END OF INTERVIEW

Section 15 – INTERVIEWER OBSERVATIONS

152. Please assess the overall ability of the respondent to answer these questions.

_____

_____

_____

153. Did respondent appear to be *(Mark (X) all that apply.)* –

1 ☐ Lucid and alert
2 ☐ Drunk
3 ☐ Under the influence of drugs
4 ☐ Physically ill
5 ☐ Confused
6 ☐ Incoherent
7 ☐ Other – *Specify* ➢ _____

154. Where was interview conducted?

1 ☐ Shelter
2 ☐ Meal provider (no shelter), Soup kitchen
3 ☐ Sidewalk, street, or alley
4 ☐ Park
5 ☐ In public access building (e.g. bus or train station, lobby of apartment, bar, theatre, etc.)
6 ☐ Parking lot
7 ☐ Other – *Specify* ➢ _____

155. Interviewer comments.

_____

_____

_____

156. For incompletes or refusals, indicate why the respondent stopped the interview or refused to participate.

_____

_____

_____

157. If age not reported on cover page, estimate respondent's approximate age.

1 ☐ Under 18 years
2 ☐ 18 to 30 years
3 ☐ 31 to 50 years
4 ☐ 51 to 65 years
5 ☐ 66 years and over
6 ☐ Don't know

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federal register

Monday
August 28, 1995

Part III

National Archives and Records Administration

36 CFR Part 1220 et al.

Electronic Mail Systems; General Records Schedule 20; Disposition of Electronic Records; Final Rule and Notice

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1220, 1222, 1228, and 1234

RIN 3095–AA58

Electronic Mail Systems

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration (NARA) is issuing standards for management of Federal records created or received on electronic mail (e-mail) systems in these amendments to 36 CFR Chapter XII. The standards will affect all Federal agencies.

On March 24, 1994, NARA published a notice of proposed rulemaking on standards for the management of e-mail records. In response to this notice NARA received 92 comments (comprising approximately 1500 pages) covering a wide range of issues from Federal agencies, private organizations, and interested individuals. NARA has revised its proposal to reflect many of the comments received and to clarify and focus the standards. The standards now being issued are framed in regulatory language, rather than as an appendix to 36 CFR Part 1234 as formerly proposed. The final rule places e-mail into its proper context in the appropriate parts of 36 CFR Chapter XII, including specifically creation and maintenance of records, regardless of media.

EFFECTIVE DATE: September 27, 1995.

FOR FURTHER INFORMATION CONTACT: James J. Hastings, Director, Records Appraisal and Disposition Division, National Archives at College Park (NIR), 8601 Adelphi Road, College Park, MD 20740–6001, or by telephone on 301–713–7110 ext. 274.

A complete set of the responses to the notice of proposed rulemaking that was published on March 24, 1994, is available for public inspection at the address listed above.

SUPPLEMENTARY INFORMATION:

Background

Because nearly all Federal agencies now use e-mail to transact Government business, there is the need for Government-wide standards on managing e-mail records. NARA published a Notice of Proposed Rulemaking on standards for managing e-mail records on March 24, 1994 (hereafter referred to as the March standards). There was significant response to this proposal, particularly on the part of those who will be affected more immediately by the rule—the Federal Government agencies. Ninety-two responses were received, of which 76 were from Federal agencies, 13 from other organizations, and three from the general public. The vast majority of comments from Federal agencies were critical of the March standards; most of the comments from other organizations were supportive.

In addition to the specific responses listed below, NARA has made two overall revisions that will clarify the coverage of the regulations and provide further guidance. The first of these changes is the framework of the standards. The March standards were written as an appendix to 36 CFR Part 1234. As an appendix to the regulations, the standards were not clearly understood because many of the provisions were duplicative of other sections of 36 CFR Subchapter B or were out of context. Accordingly, NARA now has revised various sections of 36 CFR Subchapter B to incorporate the records management standards for e-mail. Incorporating the provisions concerning e-mail in the appropriate sections will clarify coverage and accomplish the critical goal of placing e-mail in context with the creation, maintenance, and disposition of records in all media.

The second overall change NARA has made is to better focus the final regulations by eliminating references that were in the March standards to future e-mail systems, advantages of electronic recordkeeping, and other non-regulatory matters. These important considerations are more appropriately addressed by NARA, in consultation with other agencies and organizations, in separate guidance rather than in regulations. NARA will issue bulletins and publications concerning the application of the Federal Records Act to the modern office environment. These issuances will address electronic recordkeeping requirements and other matters relating to the effect of office automation on records management. NARA will continue to issue guidance, working with agencies and representatives of the computer industry, to assist agencies to adapt their recordkeeping requirements to the rapid developments in information technology.

The revised framework and the improved focus of the standards will clarify their purpose—to define requirements for proper identification and preservation of Federal records created or received on e-mail systems.

The regulations and guidance will allow agency officials to make decisions about the most appropriate and effective use of e-mail, and, therefore, to make maximum use of its potential.

Comments and Response

The following are summaries of and responses to the major comments that were received. They are listed in descending order according to the percentage of respondents who addressed each issue.

1. Comment: The March Standards Would Be Too Expensive and Burdensome

Seventy percent of the agencies and 60% of all respondents commented that implementation of the requirements in the March standards would be too expensive and burdensome. Many of the agencies interpreted the regulations as requiring electronic maintenance of e-mail records. Most agencies, because their current e-mail systems were not designed to manage records, must maintain their e-mail records on paper and file them with other records. Few agencies currently have the technical capability or recordkeeping need to maintain e-mail records electronically for their full retention period. Most of the agencies that responded stated clearly that their systems do not have the capacity to maintain their e-mail electronically and that it would require unreasonable time and expense to modify or replace their systems. The burden would be particularly great because current off-the-shelf software products do not provide full records management functionality. Many agencies indicated that they are considering the benefits of electronic recordkeeping and plan to adopt it in the future, particularly when off-the-shelf software products are available. They objected strongly, however, to a regulatory requirement to do so.

Response: While the proposed standards encouraged agencies to consider the benefits of electronic recordkeeping, neither the standards nor the Federal Records Act require electronic recordkeeping. NARA recognizes that agency e-mail systems have different characteristics and that agencies have varying recordkeeping requirements and procedures. Accordingly, the final standards have been revised to clarify that they apply to e-mail messages that meet the definition of record in the Federal Records Act, regardless of the media on which they are preserved, and to provide realistic requirements that agencies can meet immediately. As indicated above, guidance that is to be issued by NARA will address how agencies can use electronic

recordkeeping to meet their recordkeeping requirements and will describe the advantages of automated records management.

Other areas that agencies considered too costly and burdensome concerned training and monitoring the proper management of e-mail records. For a summary and response to these comments, see #11, below.

Many agencies observed that implementing the proposed standards would be so burdensome that it would violate the spirit and intent of the President's National Performance Review initiative to streamline Government and reduce regulations. E-mail affords the opportunity for very efficient communications within agencies, with other organizations, and with the citizenry as a whole. The burden of implementing the standards as proposed would make e-mail more cumbersome and would place obstacles in the way of a streamlined Government.

NARA recognizes that e-mail has a major role in the efficiency of communications; widespread and easy use of e-mail has made it an important tool for the conduct of Government business. Accordingly, agencies should ensure that e-mail messages that document their policies, programs, and functions are appropriately preserved. Therefore, agencies must put into place policies and procedures that ensure that e-mail records are identified and preserved. The final standards now being issued afford discretion as to how agencies will fulfill this responsibility but do not allow agencies the discretion as to whether they will accomplish it. If agencies are creating or receiving e-mail messages that meet the definition of records in the Federal Records Act, and most agencies that commented agreed that they are, then they must have a program in place that preserves these records for the appropriate period of time.

2. Comment: Clarification Needed Between Record and Nonrecord E-mail

Nearly 45% of the Federal agencies and more than 40% of the non-Federal respondents expressed concerns about making the distinction between record and nonrecord e-mail. Most indicated that under the March standards too many e-mail messages would be determined to be records, thus clogging the system with unimportant messages. Of particular concern was the paragraph that stated that all copies of e-mail messages must be evaluated as to whether they are records or not. Respondents believe that this would lead to needless retention of many duplicates of messages. Agencies requested NARA to clarify what constitutes the record copy. Furthermore, the language and examples that were used in the proposed standards would result in all but the most ephemeral messages being considered records. Many of the agencies also expressed concern about the treatment of drafts in the proposed standards. They commented that the March standards exaggerated the importance of drafts.

Response: NARA believes the final standards now being issued will put e-mail into its proper context and provide for preservation of only those messages that are required for agencies to fulfill their obligation under the law for adequate and proper documentation of agency organization, functions, policies, decisions, procedures, and essential transactions. Agencies have long been required to have in place recordkeeping requirements that specify what records are to be created and how they are to be preserved. By placing the e-mail provisions in context with the overall requirements agencies already have for appropriate creation, maintenance, and disposition of Federal records, NARA has stressed the importance of recordkeeping requirements regardless of media and, at the same time, reinforced the need to consider e-mail as an important tool for records creation and receipt. E-mail records are no more and no less important than other records. Agency personnel must apply the same decision-making process to e-mail that they apply to other documentary materials regardless of the media used to create them. Proper implementation of these regulations will result in thorough documentation of agency activities.

The provision in the March standards concerning multiple copies of messages potentially being records was simply a restatement of long-established NARA policy. The policy is that multiple copies of the same document *may* meet the definition of records if each of them is used to transact agency business. Copies that have such record status are usually filed in different recordkeeping systems and are used for different purposes. Not all copies, therefore, would necessarily be considered records. This provision was included in the March standards to ensure that agencies understood that it applied to e-mail just as it has applied for many years to records in other formats. The final regulations continue to have a provision concerning multiple copies. It is now placed in 36 CFR 1222.34, Identifying Federal Records, so it will be in context with other categories of materials that must be evaluated to determine their record status.

The purpose of including the provisions on drafts in the March standards was to highlight the point that e-mail systems are often used to circulate draft documents and, as specified in 36 CFR 1222.34, drafts may meet the definition of Federal record. The preservation of drafts, including those circulated on e-mail systems, could be necessary for an agency to meet its recordkeeping requirements. Draft documents or working papers that propose or evaluate high-level policies or decisions and provide unique information that contributes to the understanding of major decisions of the agency should be preserved as Federal records. Agencies should apply the same criteria specified in 36 CFR 1222.34 to drafts that are circulated on e-mail systems as they apply to drafts circulated by other means. The final regulations now being issued continue to stress that drafts and other working papers that are circulated on e-mail systems may be records. The provision for this has been placed in 36 CFR 1234.24, in the context of an agency's overall responsibility for managing electronic mail records.

3. Comment: Further NARA Guidance is Needed

Almost one half of the Federal agencies indicated in their comments that more overall guidance is needed from NARA before they could meet the broader requirements they believed the March standards implied. In addition, many agencies requested that NARA work with agencies and vendors to help develop off-the-shelf software that will accomplish the goals of electronic recordkeeping, encryption and authentication functions, and other specific features that will be required when agencies convert from paper to electronic recordkeeping.

Response: As indicated previously, NARA agrees that there is a need for work in these areas and it has a major responsibility in the development of this guidance. The regulations, however, must be limited to basic requirements; other issuances will provide guidance that explains the requirements and will offer suggestions for compliance. Future guidance from NARA, including a revision of the ''Managing Electronic Records'' handbook, will address electronic recordkeeping requirements in the office automation environment, and provide guidance for the identification of e-mail records and other information that will prove useful to agencies as they progress to more sophisticated technologies.

One specific area of confusion has been addressed in these regulations. Agencies expressed concern about the difference between electronic *records* systems and electronic *recordkeeping* systems. To clarify the distinction, the term ''electronic records system'' has been changed to ''electronic information system'' in 36 CFR 1234.2. The term ''electronic information system'' is more inclusive than ''electronic recordkeeping system'' and would include any automated system that contains and provides access to data whether or not it provides records management functions; the term ''electronic recordkeeping system'' is limited to those electronic information systems that are designed to organize, categorize, and otherwise control the creation, maintenance, and disposition of records. The definitions of electronic recordkeeping system and electronic information system have been added to the regulations to clarify this distinction (See 36 CFR 1234.2). Most e-mail systems currently in use are not designed for the preservation, use, and appropriate disposition of records so they are electronic information systems, not electronic recordkeeping systems. See 36 CFR 1234.24 (b)(2) for instructions to agencies for preserving e-mail records in recordkeeping systems.

4. Comment: The March Standards Would Have a Chilling Effect on the Use of E-mail

Approximately 40% of the Federal agency respondents expressed concerns that implementing NARA's proposed standards would bring about a chilling effect that would limit the use and usefulness of e-mail systems. Some felt that monitoring individual mailboxes would be unnecessarily invasive and far beyond what is done with paper or records in other media. Others indicated that the informal nature of e-mail messages is the main attraction of the system and NARA's proposed standards would inappropriately formalize the communications and, in this way, inhibit use. Still others commented that the obligation placed on users to consider the record status of every message and to take appropriate actions to preserve those that have been determined to be records would place unreasonable burdens on staff, would reduce productivity, and would destroy rapid communication, the most important feature of e-mail.

Response: The majority of the agencies in their comments agreed that Federal records are being created on their e-mail systems. Because of this, a number of agencies already have in place records management requirements pertaining to e-mail. These requirements provide simple instructions for staff to follow about what materials may be created on e-mail systems and the categories that may constitute Federal records. There is no indication that these instructions have had a chilling effect on the use of e-mail. Agencies that lack guidance, however, may not be creating and preserving adequate records and may not be taking advantage of the full benefits of e-mail. Clear guidance will allow agency staff to make decisions about the most appropriate and effective use of e-mail, and, therefore, make maximum use of its potential.

The final standards now being issued put the obligation to identify e-mail records in the context of 36 CFR Part 1222 Creation and Maintenance of Federal Records, which provides instructions on creation and maintenance of records in all media. This context should reassure those agencies who feared that the standards would inhibit use because the requirements are the same for records in all media. If e-mail is used for records creation or receipt, 36 CFR Part 1222 applies.

5. Comment: The Proposed Standards Overly Emphasized the Importance of E-mail

More than 30% of the Federal agencies said that the March standards overly emphasized e-mail because of the extraordinarily detailed and stringent requirements for managing e-mail compared to other records. Agencies expressed the concern that such lengthy standards for e-mail inflated the value of e-mail. They stressed that e-mail is a delivery system only and the value comes from the content of the message and not the mechanism used to send it. Many of the agencies pointed out that regulations for paper records do not reach the same level of detail, which they consider unnecessary. The level of control that would be required for e-mail would impose costly and burdensome measures regardless of the relative importance of the messages.

A major subset of the comments in the category of misplaced emphasis advocated that NARA place e-mail in context with other electronic records rather than singling e-mail out for special treatment. These agencies stressed the importance of managing all categories of electronic records and suggested that the strong emphasis on e-mail in the proposed standards diverted attention from the overall goal of agencies to properly manage records in all media.

Some agencies and professional organizations expressed the concern that the emphasis on e-mail was misplaced because it focused on only one type of record and not on the larger issue of whether agency policies, functions, transactions, and decisions are being properly documented, as required by law and regulation. They suggested that NARA attend to its responsibility to direct agencies on creation and maintenance of records documenting their activities and give agencies the discretion on how to accomplish that goal.

Response: NARA understands that the lengthy standards proposed in March could lead to the conclusion that e-mail is more important than other records. As indicated above, the final standards now being issued will put e-mail in the proper context with all other records and, therefore, respond to the concerns of those who objected to an over-emphasis on e-mail. NARA also agrees that more emphasis should be placed on recordkeeping requirements to ensure that proper records are created and maintained. If agencies fail to create and maintain on another format full documentation of their policies and activities under clear and specific recordkeeping requirements, e-mail could assume an inflated importance. Agencies have the opportunity and responsibility to put e-mail in its proper context by issuing, where they are lacking, recordkeeping requirements that clearly state what records are to be created and maintained and on what medium. The standards on e-mail now being issued should be used by agencies as they develop or revise their own recordkeeping requirements.

6. Comment: The March Standards are Confusing and Poorly Worded

More than 30% of the respondents, primarily Federal agencies, said that the proposed standards were unclear, inconsistent, or redundant. These comments concerned most sections of the March standards, including the guidance on drafts, scheduling, copies, recordkeeping systems, definition of records, calendars, preserved records, transmission and receipt data, backups, nonrecord materials, appropriate for preservation, monitoring, and permanent and temporary records.

Response: The final standards have been revised to eliminate redundancy and, as noted above, will put the requirements for e-mail in the context of overall records management responsibilities. These changes were made in response to the requests to clarify and focus the standards.

7. Comment: There is a Need for a Schedule for Implementation of the March Standards

Approximately 30% of the Federal agencies expressed very serious concerns about the schedule for implementation of the March standards. These concerns were mainly based in the belief that NARA was imposing electronic maintenance of e-mail records, which would require expenditure of millions of dollars in some agencies to purchase the hardware and software required to appropriately maintain e-mail records electronically. The level of expense is significantly increased by the fact that, as agencies pointed out, off-the-shelf products that meet the requirements for electronic recordkeeping are not yet available. Accordingly, many agencies said that they would need several years to implement the proposed standards.

Response: As indicated in the March standards, NARA recognizes that the variety of automated systems in Federal agencies have different characteristics and agencies have differing recordkeeping requirements. Agencies must determine whether their needs require electronic recordkeeping (rather than paper recordkeeping) and, if so, when to implement it. The essential point remains, however, that Federal agencies are obliged to identify and preserve their e-mail records. This obligation originates in the Federal Records Act, not in NARA standards. The final standards are intended to amplify the statute and improve the current regulations by focusing more on how agencies can fulfill their responsibility to preserve their records appropriately.

8. Comment: There are Difficulties Related to the Preservation of Transmission and Receipt Data

A key component of an e-mail message is the information about who sent it, who received it, and the date. Approximately 30% of the Federal agencies expressed concern about whether their systems could capture and preserve transmission and receipt data with the record and whether their systems had the capacity to store it. Some agencies said their systems do not provide the full name of individuals so users will have to annotate the message to ensure that all necessary information is preserved. Agencies stressed that they should have discretion in determining what information is necessary for them to preserve as an adequate record; they believe that the requirements for preserving transmission and receipt data with e-mail records should be the same as apply to paper records.

Response: The standards now being issued include fundamentally the same language on transmission and receipt data as was proposed in the March standards. E-mail records must identify who sent and received the message and the date. Otherwise, their usefulness as records will be greatly diminished because the context will not be understood. The body of the text has little value if the reader does not know who was involved in the communication and when it occurred. Agencies must take reasonable measures to preserve transmission data with their current electronic information systems and they should ensure that any new electronic information systems automatically include adequate transmission data on a paper printout, and, where electronic recordkeeping is used, that they preserve transmission data electronically. Agencies that are concerned about preserving receipt data should note that the revised standards direct agencies that have an electronic mail system with a receipt feature to issue instructions to staff on when to request receipts and how to preserve them. If systems do not have this feature or if it is impossible for agencies to preserve receipts, users should be instructed accordingly. The language on receipt data provides discretion to agencies on when such information should be requested. Only if it is needed for recordkeeping purposes should it be preserved with the record.

9. Comment: The Proposed Standards Do Not Address Privacy/FOIA Considerations

Twenty-two agencies (nearly 30%) believe that the March standards had Privacy and Freedom of Information Act implications. They suggested that staff members have the expectation of privacy or confidentiality when they send messages, and this would be violated if the messages were preserved as records and released to the public.

Response: Agencies must determine what constitutes appropriate use of e-mail systems by staff members and what expectations of privacy may be assumed. This is not a NARA policy determination. For this reason, the standards now being issued have not been changed to reflect the Privacy/FOIA comments of agencies. Some of the comments suggest a misunderstanding of the distinction between personal materials and Federal records. For guidance in this area, see NARA's management guide, ''Personal Papers of Executive Branch Officials.''

10. Comment: The Provisions Concerning Backups are Confusing

The March standards included a section on the suitability of backup tapes for use as a recordkeeping system. Several agencies found the discussion of system and security backups to be confusing and the distinction between the two irrelevant. Some also indicated that the proposal could lead to expensive changes to backup procedures.

Response: The purpose of addressing backups in the standards was to stress that backups are not suitable recordkeeping systems. Their purpose is for recovery of data or systems in case of loss; their purpose is not efficient preservation, use, retrieval, and disposition of active records. Since this issue is part of the overall consideration of requirements for electronic recordkeeping systems, guidance on backups will be included in the future revision of ''Managing Electronic Records'' and/or other guidance from NARA. Therefore, only one reference has been included in the standards pertaining to backups, and it has been placed in a paragraph concerning appropriate recordkeeping systems (36 CFR 1234.24(c)).

11. Comment: The Training and Monitoring Provisions are Unrealistic

Twenty Federal agencies reacted to the provisions in the March standards that called for training all staff members on identification, maintenance, and disposition of e-mail records. Some agencies expressed the concern that it is unrealistic to expect records managers to train all agency employees or monitor staff determinations of the record status of every e-mail message. They indicated that it is impossible to ensure the effectiveness of the standards because of the huge number of users of e-mail and the responsibility that individual users must have for determining which messages are Federal records. Many were particularly concerned about the cost of monitoring, which several agencies estimated would require one records manager for every 100 agency employees. No agency can afford to have a staff of hundreds of records managers monitoring e-mail determinations. All respondents who addressed this issue highlighted its excessive and unrealistic expectations. Agencies did not entirely object to any training and monitoring; they recognize that they have the responsibility to carry out both of these responsibilities. They objected, however, to what they concluded are the excessively burdensome and unrealistically detailed

requirements specified in the March standards.

Response: NARA agrees that training and monitoring of e-mail determinations must be reasonable and within the administrative and fiscal capabilities of the agencies. Monitoring of record status determinations is an essential part of periodic overall reviews of the implementation of an agency's records management program. A specific reference to monitoring record status determinations of e-mail messages has been added to place this responsibility in its proper context within 36 CFR 1220.42, Agency internal evaluations. The same approach has been taken for training requirements. 36 CFR 1222.20 previously required agencies to train agency personnel on recordkeeping requirements and identification of records. This part now includes an amended sentence that stresses that training must pertain to all materials, regardless of media. Again, this puts training for e-mail in the context of existing responsibility. Agencies will be able to fulfill their responsibility to ensure proper management of e-mail records without significant additional burdens or expense if they include e-mail training and reviews as part of their ongoing programs.

12. Comment: NARA Cannot Impose Upon Agencies the Format on Which They Preserve Their Records

The agency concerns about format centered on the expense and burden of maintaining e-mail electronically. As indicated in comment number one, above, they strongly stated that they are not in the position to preserve their e-mail electronically, and NARA should not impose this on them. Some respondents representing researchers advocated that e-mail should be preserved in electronic format because of the electronic format's enhanced use.

Response: NARA concurs with both of these seemingly contradictory positions. Electronic records that are appraised as permanent in schedules approved by NARA that are preserved in an electronic format *will* have enhanced usefulness for future research. This enhancement will accrue only if the records are preserved in an electronic recordkeeping system with records management functionality that allows for sorting, retrieving, and manipulating the records. This enhancement could also be advantageous for agencies while the records remain in their custody, and NARA encourages agencies to consider the benefits of electronic recordkeeping systems with full records management capabilities. However, the prospective interests of future researchers cannot be used to force agencies to do the impossible nor can these interests dictate to agencies how they should preserve their records for their own use. Agencies must create and maintain records to conduct Government business and account for their activities. Only the agency can determine what format best serves these purposes. Some agencies, or components of agencies, may determine that paper recordkeeping will continue to be adequate and cost-effective for the documentation of their transactions. In addition, it is clear from the agency responses that the lack of commercial off-the-shelf technology and the expense of custom developed solutions make electronic preservation of all e-mail records of the volume produced by the Federal Government impossible at the present time. For many agencies to fulfill their responsibilities immediately under the Federal Records Act they *must* print their e-mail records because no alternative currently exists. The final standards are designed to clarify this point. NARA guidance documents that are being issued will assist agencies as they consider making the transition from paper to electronic preservation. Meanwhile, agencies cannot wait until they have the technology to preserve their records electronically to apply these records management standards to their electronic records. E-mail records must be preserved in accordance with the provisions of the law and the capabilities of the agencies. Format concerns must not divert the agencies from this essential requirement.

13. Comment: There are Difficulties Concerning the Maintenance of Distribution Lists

Maintaining the names of staff members on distribution lists presents numerous technical and administrative problems, according to the agencies. The dynamic nature and significant length of distribution lists make their preservation problematic for agencies.

Response: Transmission data is necessary to understand the context of records in any media. Because in some cases e-mail is sent to individuals who are only identified on a distribution list, information page, or other screen that shows the names of individuals who received messages, agencies should make reasonable attempts to have this information available for the same amount of time as the record itself is retained. Those agencies that have limited technical capabilities to preserve distribution lists are not required to preserve them with each specific record. The purpose of this provision is to make the agency realize that for its own recordkeeping needs it must have a record available of the names of individuals who have received records. The information could consist of staff rosters maintained in a personnel office, electronic lists maintained in ADP offices, or lists that are automatically attached to the e-mail records. As with other format issues, NARA is not dictating how the lists are to be maintained.

14. Comment: The Standards are Not Necessary

The agencies that stated that the proposed standards were not needed indicated that the existing law and regulations already require preservation of records, regardless of format. Some indicated that the need was for more guidance on specific issues such as functional requirements and adequacy of documentation.

Response: NARA agrees that the current law and regulations apply to e-mail. The standards, however, are intended to highlight agency responsibilities as they use this relatively new technology for creation and receipt of records. The final rule provides the necessary context to underscore these responsibilities. In addition, as previously indicated, future guidance will respond to the requests for assistance from NARA in the other areas.

15. Comment: The Coverage of Calendars in E-mail Standards is Misleading

Numerous agencies and other respondents expressed concern about the provisions in the March standards on calendars. Some agencies indicated that their calendars were not part of their e-mail system. Others indicated that their calendars were not shared. A public respondent advocated that NARA provide specific guidance to agencies about identifying and managing electronic calendars that are records.

Response: Some confusion has resulted from including instructions on calendars in proposed standards on e-mail. While some e-mail systems include calendars, providing extensive instructions on calendars in regulations governing e-mail was misunderstood by some. The final regulations continue to stress that calendars on e-mail systems, just as calendars on other media, may be records and, if so, General Records Schedule 23 applies. As noted in GRS 23, Federal records of high-level officials must be specifically scheduled to allow NARA appraisal.

16. Comment: Other Revisions or Clarifications are Necessary

Many other comments requested clarification or revision of the March standards. There were numerous suggestions for alternative language and questions on adequacy of documentation, external systems, conflicts with existing laws and authorities, and the security of systems.

Response: NARA revised the standards to reflect many of these comments, as explained above. Many of the other concerns are addressed in the NARA guidance publications that will be issued.

17. Comment: Concur with the Proposed Standards

A few agencies and several representatives of the research community indicated their concurrence with the March standards. They believed that the standards were timely and necessary for the preservation of important e-mail records.

Response: NARA believes that the final regulations continue to reflect the intent and spirit of the March standards that these respondents endorsed. Compliance with the regulations set forth in this rule will result in the identification and preservation of e-mail messages that constitute Federal records. Those that are appraised as permanent will be available in the future for historians and others who have expressed their interest and concern. Agencies will better understand their responsibilities under the final standards. Consequently, these standards will result in the preservation of messages that are Federal records and should continue to meet with the approval of those who concurred with the March standards.

Conclusion

Federal agencies are using office automation to conduct significant activities. This challenges the agencies and NARA to ensure that records of the Federal government that are created through office automation are identified and appropriately preserved. NARA will continue to work with agencies to develop policies and practices that ensure the preservation of the content, context, and structure of records that are produced through office automation.

As agencies become more and more accustomed to conducting their business electronically, they may find that automated records management provides a number of advantages that assists them in accomplishing their mission more efficiently and effectively. Electronic recordkeeping systems may be the best means to preserve the content, structure, and context of electronic records. In addition, an automated system may be more easily searched and manipulated than paper records. The electronic format may also allow simultaneous use by multiple staff members and may provide a more efficient method to store records. Furthermore, when they are no longer needed by the creating agency, access by future researchers to permanently valuable electronic records would be enhanced by electronic preservation. NARA will work closely with agencies as they pursue the next phase of office automation—comprehensive automated records management.

To assist in the process of determining records status, NARA recommends that when agencies consider acquiring automated records management systems they include a feature that helps users identify records. For example, agencies may want their systems to allow users to tag documents as record or nonrecord material. Another option would be to install an automated records management system that analyzes the contents of a message according to specified rules in order to prompt the user with a suggested categorization.

As agencies consider automated records management of their office automation records they should include in their deliberations the following broad functional requirements for recordkeeping systems:

1. Recordkeeping systems must allow for the grouping of related records, to ensure their proper context.
2. Recordkeeping systems must make records accessible to authorized staff, to ensure their usefulness to the agency.
3. Recordkeeping systems must preserve records for their authorized retention period, to ensure their availability for agency use, to preserve the rights of the Government and citizens, and to allow agencies to be held accountable for their actions.

When agencies take the next step in office automation, they should do so with the assurance that their records will be appropriately preserved and accessible. NARA and the agencies will work together to ensure that recordkeeping policies and programs for records that are produced through office automation serve the needs of the agencies and the needs of future researchers.

This rule is contained in NARA's Regulatory Plan and is a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993. As such, it has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

List of subjects in 36 CFR parts 1220, 1222, 1228, and 1234

Archives and records; Computer technology.

For the reasons set forth in the preamble, 36 CFR Chapter XII of the Code of Federal Regulations is amended as follows:

SUBCHAPTER B—RECORDS MANAGEMENT

PART 1220—FEDERAL RECORDS; GENERAL

1. The authority for part 1220 continues to read as follows:

Authority: 44 U.S.C. 2104(a) and chs. 29 and 33.

2. Section 1220.14 is amended by removing the definition for ''Information system'' and adding the following definition in alphabetical order:

§ 1220.14 General definitions.

* * * * *

Recordkeeping system is a manual or automated system in which records are collected, organized, and categorized to facilitate their preservation, retrieval, use, and disposition.

* * * * *

3. Section 1220.42 is revised to read:

§ 1220.42 Agency internal evaluations.

Each agency shall periodically evaluate its records management programs relating to records creation and recordkeeping requirements, maintenance and use of records, and records disposition. These evaluations shall include periodic monitoring of staff determinations of the record status of documentary materials, including electronic mail, and implementation of these decisions. These evaluations should determine compliance with NARA regulations in subchapter B of this chapter and assess the effectiveness of the agency's records management program.

PART 1222—CREATION AND MAINTENANCE OF FEDERAL RECORDS

4. The title of part 1222 is revised to read as set forth above.

5. The authority citation for part 1222 continues to read:

Authority: 44 U.S.C. 2904, 3101, and 3102.

6. Section 1222.20 is amended by revising paragraphs (b)(1) and (b)(5) to read as follows:

§ 1222.20 Agency responsibilities.

* * * * *

(b) * * *

(1) Assign to one or more offices of the agency the responsibility for the development and implementation of agency-wide programs to identify, develop, issue, and periodically review recordkeeping requirements for records for all agency activities at all levels and locations in all media including paper, microform, audiovisual, cartographic, and electronic (including those created or received using electronic mail);

* * * * *

(5) Ensure that adequate training is provided to all agency personnel on policies, responsibilities, and techniques for the implementation of recordkeeping requirements and the distinction between records and nonrecord materials, regardless of media, including those materials created by individuals using computers to send or receive electronic mail.

* * * * *

Subpart C—Standards for Agency Recordkeeping Requirements

7. In § 1222.30 paragraph (b) is revised to read:

§ 1222.30 Purpose.

* * * * *

(b) Although many agencies regularly issue recordkeeping requirements for routine operations, many do not adequately specify such requirements for documenting policies and decisions, nor do they provide sufficient guidance on distinguishing between records and nonrecord materials, and maintaining records created or received on electronic mail systems.

8. In § 1222.32, the introductory text is revised to read as follows:

§ 1222.32 General requirements.

Agencies shall identify, develop, issue, and periodically review their recordkeeping requirements for all agency operations and for records in all media, including those records created or received on electronic mail systems. Recordkeeping requirements shall:

* * * * *

9. In § 1222.34, paragraph (d) is redesignated as paragraph (f), and new paragraphs (d), (e), and (g) are added to read as follows:

§ 1222.34 Identifying Federal records.

* * * * *

(d) *Record status of copies.* The determination as to whether a particular document is a record does not depend upon whether it contains unique information. Multiple copies of the same document and documents containing duplicative information, including messages created or received on electronic mail systems, may each have record status depending on how they are used to transact agency business. See paragraph (f)(2) of this section concerning the nonrecord status of extra copies.

(e) *Electronic mail messages.* Messages created or received on electronic mail systems may meet the definition of record in 44 USC 3301.

* * * * *

(g) *Agency responsibilities.* Agencies shall take appropriate action to ensure that all staff are capable of identifying Federal records. For electronic mail systems, agencies shall ensure that all staff are informed of the potential record status of messages, transmittal and receipt data, directories, and distribution lists.

10. In § 1222.50 paragraph (a) and paragraph (b)(2) are revised; paragraphs (b)(3) through (b)(8) are redesignated as paragraphs (b)(4) through (b)(9); newly redesignated paragraphs (b)(4), (b)(6), and (b)(8) are revised; and new paragraph (b)(3) is added to read as follows:

§ 1222.50 Records maintenance.

(a) Agencies shall prescribe an appropriate records maintenance program so that complete records are filed or otherwise identified and preserved, records can be found when needed, the identification and retention of permanent records are facilitated, and permanent and temporary records are physically segregated or, for electronic records, segregable.

(b) * * *

* * * * *

(2) Formally specify official file locations for records in all media and prohibit the maintenance of records at unauthorized locations;

(3) Formally specify which officials are responsible for maintenance and disposition of electronic records and which computer systems are used for recordkeeping;

(4) Standardize reference service procedures to facilitate the finding, charging out, and refiling of paper, audiovisual, and cartographic and architectural records, and to ensure that reference to electronic records minimizes the risk of unauthorized additions, deletions, or alterations;

* * * * *

(6) Review its records maintenance program periodically to determine its adequacy; audit a representative sample of its paper, audiovisual, electronic, cartographic, and architectural files for duplication, misclassification, or misfiles;

* * * * *

(8) Establish and implement procedures for maintaining records and nonrecord materials separately; ensure that record materials generated electronically are clearly identified as records and protected from unauthorized change or deletion for the length of their scheduled retention period; and

* * * * *

PART 1228—DISPOSITION OF FEDERAL RECORDS

11. The authority citation for part 1228 is revised to read as follows:

Authority: 44 U.S.C. chs. 21, 29, and 33.

12. Section 1228.1 is amended by adding new paragraph (e) as follows:

§ 1228.1 Scope of part.

* * * * *

(e) The material was created or received on an electronic mail system and it meets the definition of record. For specific instructions on the disposition of records created or received on electronic mail systems, see 36 CFR 1234.32.

PART 1234—ELECTRONIC RECORDS MANAGEMENT

Subpart A—General

13. The authority citation for part 1234 continues to read:

Authority: 44 U.S.C. 2904, 3101, 3102, and 3105.

14. Section 1234.1 is revised to read as follows:

§ 1234.1 Scope of part.

This part establishes the basic requirements related to the creation, maintenance, use, and disposition of electronic records. Electronic records include numeric, graphic, and text information, which may be recorded on any medium capable of being read by a computer and which satisfies the definition of a record. This includes, but is not limited to, magnetic media, such as tapes and disks, and optical disks. Unless otherwise noted, these requirements apply to all electronic information systems, whether on microcomputers, minicomputers, or main-frame computers, regardless of storage media, in network or stand-alone configurations. This part also covers creation, maintenance and use, and disposition of Federal records

created by individuals using electronic mail applications.

15. Section 1234.2 is amended by removing the definitions for ''electronic records system'' and ''information system'' and adding the following definitions in alphabetical order:

§ 1234.2 Definitions.

* * * * *

Electronic information system. A system that contains and provides access to computerized Federal records and other information.

Electronic mail system. A computer application used to create, receive, and transmit messages and other documents. Excluded from this definition are file transfer utilities (software that transmits files between users but does not retain any transmission data), data systems used to collect and process data that have been organized into data files or data bases on either personal computers or mainframe computers, and word processing documents not transmitted on an e-mail system.

Electronic mail message. A document created or received on an electronic mail system including brief notes, more formal or substantive narrative documents, and any attachments, such as word processing and other electronic documents, which may be transmitted with the message.

Electronic recordkeeping system. An electronic system in which records are collected, organized, and categorized to facilitate their preservation, retrieval, use, and disposition.

* * * * *

Transmission and receipt data.

(1) *Transmission data.* Information in electronic mail systems regarding the identities of sender and addressee(s), and the date and time messages were sent.

(2) *Receipt data.* Information in electronic mail systems regarding date and time of receipt of a message, and/or acknowledgment of receipt or access by addressee(s).

* * * * *

Subpart B—Program Requirements

16. In § 1234.10 paragraphs (e) through (l) are redesignated (f) through (m); the term ''electronic records system'' is revised to read ''electronic information system'' in paragraph (d) and redesignated paragraphs (f), (g), (h), and (m); and a new paragraph (e) is added to read as follows:

§ 1234.10 Agency responsibilities.

* * * * *

(e) Ensuring that adequate training is provided for users of electronic mail systems on recordkeeping requirements, the distinction between Federal records and nonrecord materials, procedures for designating Federal records, and moving or copying records for inclusion in an agency recordkeeping system;

* * * * *

Subpart C—Standards for the Creation, Use, Preservation, and Disposition of Electronic Records

§§ 1234.20 and 1234.22 [Amended]

17. In § 1234.20 (a) and (b) the term ''electronic records system'' is removed , and the term ''electronic information system'' is added in its place, and in § 1234.22 (a) and (b) the term ''electronic records system'' is removed, and the term ''electronic recordkeeping system'' is added in its place.

§§ 1234.24, 1234.26, 1234.28, 1234.30 and 1234.32 [Redesignated as §§ 1234.26, 1234.28, 1234.30, 1234.32 and 1234.34]

18. Sections 1234.24, 1234.26, 1234.28, 1234.30, and 1234.32 are redesignated as §§ 1234.26, 1234.28, 1234.30, 1234.32, and 1234.34 and a new 1234.24 is added to read as follows:

§ 1234.24 Standards for managing electronic mail records.

Agencies shall manage records created or received on electronic mail systems in accordance with the provisions of this chapter pertaining to adequacy of documentation, recordkeeping requirements, agency records management responsibilities, and records disposition (36 CFR parts 1220, 1222, and 1228).

(a) Agency instructions on identifying and preserving electronic mail messages will address the following unique aspects of electronic mail:

(1) Some transmission data (names of sender and addressee(s) and date the message was sent) must be preserved for each electronic mail record in order for the context of the message to be understood. Agencies shall determine if any other transmission data is needed for purposes of context.

(2) Agencies that use an electronic mail system that identifies users by codes or nicknames or identifies addressees only by the name of a distribution list shall instruct staff on how to retain names on directories or distributions lists to ensure identification of the sender and addressee(s) of messages that are records.

(3) Agencies that use an electronic mail system that allows users to request acknowledgments or receipts showing that a message reached the mailbox or inbox of each addressee, or that an addressee opened the message, shall issue instructions to e-mail users specifying when to request such receipts or acknowledgments for recordkeeping purposes and how to preserve them.

(4) Agencies with access to external electronic mail systems shall ensure that Federal records sent or received on these systems are preserved in the appropriate recordkeeping system and that reasonable steps are taken to capture available transmission and receipt data needed by the agency for recordkeeping purposes.

(5) Some e-mail systems provide calendars and task lists for users. These may meet the definition of Federal record. Calendars that meet the definition of Federal records are to be managed in accordance with the provisions of General Records Schedule 23, Item 5.

(6) Draft documents that are circulated on electronic mail systems may be records if they meet the criteria specified in 36 CFR 1222.34.

(b) Agencies shall consider the following criteria when developing procedures for the maintenance of electronic mail records in appropriate recordkeeping systems, regardless of format.

(1) Recordkeeping systems that include electronic mail messages must:

(i) Provide for the grouping of related records into classifications according to the nature of the business purposes the records serve;

(ii) Permit easy and timely retrieval of both individual records and files or other groupings of related records;

(iii) Retain the records in a usable format for their required retention period as specified by a NARA-approved records schedule;

(iv) Be accessible by individuals who have a business need for information in the system;

(v) Preserve the transmission and receipt data specified in agency instructions; and

(vi) Permit transfer of permanent records to the National Archives and Records Administration (see 36 CFR 1228.188 and 36 CFR 1234.32(a)).

(2) Agencies shall not store the recordkeeping copy of electronic mail messages that are Federal records only on the electronic mail system, unless the system has all of the features specified in paragraph (b)(1) of this section. If the electronic mail system is not designed to be a recordkeeping system, agencies shall instruct staff on how to copy Federal records from the electronic mail system to a recordkeeping system.

(c) Agencies that maintain their electronic mail records electronically shall move or copy them to a separate

electronic recordkeeping system unless their system has the features specified in paragraph (b)(1) of this section. Because they do not have the features specified in paragraph (b)(1) of this section, backup tapes should not be used for recordkeeping purposes. Agencies may retain records from electronic mail systems in an off-line electronic storage format (such as optical disk or magnetic tape) that meets the requirements described at 36 CFR 1234.30(a). Agencies that retain permanent electronic mail records scheduled for transfer to the National Archives shall either store them in a format and on a medium that conforms to the requirements concerning transfer at 36 CFR 1228.188 or shall maintain the ability to convert the records to the required format and medium at the time transfer is scheduled.

(d) Agencies that maintain paper files as their recordkeeping systems shall print their electronic mail records and the related transmission and receipt data specified by the agency.

19. The heading of newly redesignated § 1234.32 is revised, the term ''electronic records system'' is revised to read ''electronic information system'' in paragraph (a), and a new paragraph (d) is added to read as follows:

§ 1234.32 Retention and disposition of electronic records.

* * * * *

(d) Electronic mail records may not be deleted or otherwise disposed of without prior disposition authority from NARA (44 U.S.C. 3303a). This applies to the original version of the record that is sent or received on the electronic mail system and any copies that have been transferred to a recordkeeping system. See 36 CFR part 1228 for records disposition requirements.

(1) *Disposition of records on the electronic mail system*. When an agency has taken the necessary steps to retain the record in a recordkeeping system, the identical version that remains on the user's screen or in the user's mailbox has no continuing value. Therefore, NARA has authorized deletion of the version of the record on the electronic mail system under General Records Schedule 20, Item 14, after the record has been preserved in a recordkeeping system along with all appropriate transmission data.

(2) *Records in recordkeeping systems*. The disposition of electronic mail records that have been transferred to an appropriate recordkeeping system is governed by the records schedule or schedules that control the records in that system. If the records in the system are not scheduled, the agency shall follow the procedures at 36 CFR part 1228.

20. Newly redesignated § 1234.34 is amended by adding a new paragraph (c) to read as follows:

§ 1234.34 Destruction of electronic records.

* * * * *

(c) Agencies shall establish and implement procedures that specifically address the destruction of electronic records generated by individuals employing electronic mail.

Dated: August 14, 1995.

John W. Carlin,

Archivist of the United States.

[FR Doc. 95–21125 Filed 8–25–95; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

General Records Schedule 20; Disposition of Electronic Records

AGENCY: National Archives and Records Administration.

ACTION: Notice of issuance of General Records Schedule.

SUMMARY: General Records Schedules (GRS) are issued by the Archivist of the United States to provide disposal authorization for temporary records common to several or all agencies of the Federal Government. NARA is obliged by the Federal Records Act to issue such schedules, and Federal agencies are required to follow their provisions (44 U.S.C. 3303a(d)). On October 7, 1994, NARA published a notice in the **Federal Register** requesting comment on a revision of General Records Schedules. The revision included removal of several items from GRS 23, Records Common to Most Offices Within Agencies, and consolidation of those items with other electronic records in GRS 20. Other changes were made to clarify and extend the coverage of some of the items. The following is a summary of the comments received and NARA's response. The final GRS 20 was approved on August 14, 1995.

FOR FURTHER INFORMATION CONTACT: James J. Hastings, Director, Records Appraisal and Disposition Division, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001. (301) 713–7100, ext. 274.

SUPPLEMENTARY INFORMATION:

Background

NARA proposed consolidating authority for the disposition of generic electronic records into General Records Schedule (GRS) 20, Electronic Records, by moving several items from GRS 23, Records Common to Most Offices Within Agencies, to GRS 20. On August 14, 1995, the Archivist of the United States approved the revised GRS 20. It is now in effect.

The revised GRS 20 authorizes deletion of certain types of electronic records associated with large data base systems, such as inputs, outputs, processing files, special format files, and system documentation for systems that have been appraised by NARA as temporary. To protect potentially permanent records, several of these items are limited by specific exclusions. As a result of the move of GRS 23 items that pertain to electronic records into GRS 20, the revised GRS 20 also authorizes deletion of records on word processing and electronic mail systems once a recordkeeping copy has been made, and authorizes deletion of electronically-generated administrative spreadsheets and other administrative records that are included in recordkeeping systems that have been authorized for disposal by NARA. All electronic records not covered by GRS 20 or other General Records Schedules must be scheduled individually.

For convenience of reference, the revised GRS 20 and GRS 23 are printed at the end of this notice.

Comments and Responses

NARA received 37 written responses after publication of the proposed changes to GRS 20 and 23 in the **Federal Register** on October 17, 1994. Fourteen of the comments were submitted by Federal agencies and 23 were submitted by members of the public. The responses from Federal agencies were supportive of the changes; two wrote only to provide concurrence. Comments from the Federal agencies focused on the coverage and applicability of the General Records Schedules; ten requested clarifications or suggested changes. One agency commented on the overall coverage of the GRS. The comments from twenty-one members of the public and professional organizations, two Federal agencies, and two state archivists were critical of the proposal. Except for the response from one state archivist, all critical comments were based on a belief that implementation of the revised schedules would result in destruction of valuable Federal documentation.

Neither the agencies nor the public commented on the revised GRS 23.

Several agencies made general comments on the GRS or specifically on GRS 20 that were not responsive to the notice in the **Federal Register**. Nevertheless, NARA will carefully review these comments and will consider incorporating them in future changes to the GRS, NARA handbooks or other guidance. They will not be addressed in this notice.

The comments that were received included some that were general and applied to more than one of the items in the proposed GRS. Others were specifically directed to one particular item. The comments and responses listed below pertain first to the overall comments and then to those that were addressed to specific items.

The full set of comments on the revision to GRS 20 that was proposed on October 17, 1994, is available for public inspection at the National Archives at College Park, Records Appraisal and Disposition Division, Room 2100, 8601 Adelphi Road, College Park, MD 20740.

1. Value of Electronic Records

a. *Comments.* Twenty-six respondents expressed an overall concern about the changes to GRS 20. In their opinion GRS authorization for deletion of electronic versions of records that had been converted to paper or microform would be inappropriate. They stressed that hard copy records are not satisfactory replacements for records in electronic format and cited the well-known advantages of electronic records for future research. They believe that the substitution of hard copy records would hamper the work of future researchers, so agencies should be required to preserve electronically the records that they create on computers. Respondents cited several examples of the feasibility of preserving electronic records, including the State Department's Foreign Affairs Information System, a system in the Canadian Trade Negotiations Office, and a pilot project at the Navy Research Laboratory as examples of the feasibility of preserving records electronically.

b. *Response.* NARA has recognized for many years the advantages electronic records have for searching, manipulating, and storing information. In 1968 NARA established an organizational unit to develop policies for the selection and preservation of electronic records. Since that time NARA's appraisal guidelines have stressed the added value brought by the manipulability of automated data. In addition to the initial focus on archival preservation of electronic records, NARA concentrated on implementing its statutory obligation to provide agencies with the authority to delete electronic records that have only temporary value. Accordingly, the first version of GRS 20 was published in 1972 to provide disposal authority for specific categories of temporary records associated with mainframe applications. Excluded from its coverage, and all subsequent revisions, were the types of records generated by large data systems that might have archival value.

A 1988 revision of the GRS extended disposal authority to specific categories of records generated by end-user applications on stand-alone or networked computers used by individuals. This new GRS, General Records Schedule 23, covered word processing, electronic mail, spreadsheets, and administrative data bases. The items concerning these applications authorized the deletion of the electronic versions of records created after they were printed to hard copy. Use of word processing software evolved from use of typewriters and

stand-alone word processors used to produce paper documents. Even as networks were installed, agencies continued to maintain records produced with office automation applications in organized paper files, especially since end-user applications were not designed to classify, index, and maintain documents for their authorized retention period.

NARA's final standards for the management of e-mail and the revision to GRS 20 that has now been approved clarify the disposition authority for electronic records produced by end-users. The GRS 23 that was approved in 1988 authorized deletion of word processing and e-mail records from the ''live'' system after they had been copied to paper or microform. This authority has now been moved to GRS 20 and is extended to authorize deletion of electronic mail and word processing records from the ''live'' system after they have been copied to an *electronic* recordkeeping system. It also clearly states the requirement to preserve transmission data with electronic mail records to ensure that their context as well as content are preserved. GRS 20 does *not* authorize the deletion of the versions of electronic mail or word processing records that have been placed in the agency's recordkeeping system.

The new GRS 20 recognizes that electronic mail and word processing applications are used to create Federal records, including some permanent records. Separate NARA guidance and regulations instruct agencies to appropriately preserve records that are produced through office automation in the form that they determine is best to accomplish their mission within their administrative and fiscal capabilities.

GRS 20, NARA regulations, and NARA guidance instruct agencies to identify records created using office automation and to maintain them in a recordkeeping system that preserves their content, structure, and context for their required retention period. For records to be useful they must be accessible to all authorized staff, and must be maintained in recordkeeping systems that have the capability to group similar records and provide the necessary context to connect the record with the relevant agency function or transaction. Storage of electronic mail or word processing records on electronic information systems that do not have these attributes will not satisfy the needs of the agency or the needs of future researchers.

Search capability and context would be severely limited if records are stored in disparate electronic files maintained by individuals rather than in agency-controlled recordkeeping systems. Furthermore, if electronic records are stored in electronic information systems without records management functionality, permanent records may not be readily accessible for research. Unless the records are adequately indexed, searches, even full-text searches, may fail to find all documents relevant to the subject of the query. In addition, numerous irrelevant temporary records, that would be segregable in systems with records management functionality, may be found. Agency records can be managed only if they are in agency recordkeeping systems.

The respondents who expressed this concern mistakenly concluded that the proposed GRS 20 authorized the deletion of valuable records. On the contrary, GRS 20 requires the preservation of valuable records by instructing agencies to transfer them to an appropriate recordkeeping system. Only after the records have been properly preserved in a recordkeeping system will agencies be authorized by GRS 20 to delete the versions on the electronic mail and word processing systems. As indicated, most agencies have no viable alternative at the present time but to use their current paper files as their recordkeeping system. As the technology progresses, however, agencies will be able to consider converting to electronic recordkeeping systems for their records.

The critical point is that the revised GRS does not authorize the destruction of the recordkeeping copy of the electronic mail and word processing records. The unique program records that are produced with office automation will be maintained in organized, managed office recordkeeping systems. Federal agencies must have the authority to delete the original version from the ''live'' electronic information system to avoid system overload and to ensure effective records management. Program records that have been transferred to the recordkeeping system will not be affected by GRS 20. Their disposition is controlled by other general or specific records schedules.

NARA appraises and schedules records in organized recordkeeping systems. It is essential for the originating agency, for NARA, and for future researchers that records, especially those appraised as permanent, be maintained in recordkeeping systems with records management functionality to allow for appropriate maintenance and disposition.

The examples cited by some of the respondents as support for their position serve more as useful illustrations of NARA's position. The Department of State's Foreign Affairs Information System (now the Automated Data System) is not a word processing or electronic communications system. It is a *recordkeeping* system that stores, indexes, and retrieves the Department's important program records. It is not related in any way to GRS 20. The system was appraised as permanent by NARA in 1983 and consists of an automated index, microfilm copies of paper documents, computer output microfilm of electronic message traffic, and digitally stored texts of electronic message traffic. This is an excellent example of the benefits of transferring records from various formats to a recordkeeping system to ensure their continued availability to staff and preservation for NARA.

The Canadian Trade Negotiation Office did not have an electronic recordkeeping system for its office automation records. It maintained its records either on-line, on paper, or on backup tapes. The backup tapes were acquired in their entirety by the National Archives of Canada. They consisted of a complicated mixture of data, files, documents, directories, and software and included records that had permanent value, records with no archival value, and duplicates. If the records had been maintained on a recordkeeping system in the agency, the Canadian National Archives would have been able to identify, appraise, and acquire only records with permanent value and allow the agency to dispose of the remainder. Because of the great value of the records and the significance of the agency, the National Archives of Canada undertook extraordinary measures to impose basic intellectual order on the system data, files, and directories to make them retrievable. Despite this time consuming project, information concerning the Trade Negotiation Office's functions, activities, and records management practices was not recreated. The Canadian experience with this project is a powerful example of the need for records to be preserved by an agency on a recordkeeping system.

The pilot project by the Navy Research Laboratory cited by respondents also supports NARA's position that records need to be maintained in a recordkeeping system. The Navy project was conducted by an agency historian who invested approximately one hour to categorize 100–150 messages that were maintained

on the electronic mail system. Additional time was required to edit entries for input into a separate database and to manage the database. Federal agencies routinely create or receive tens of thousands of messages per day. If these records were preserved and managed in a recordkeeping system, as advocated by NARA, such labor intensive, time consuming work as was done in the Navy pilot project would not be necessary. If, on the other hand, Federal agencies were to adopt the Navy pilot project as a model they would be required to analyze each message individually, provide whatever context would be necessary, and enter the data into a database. If an agency has an average of 40,000 messages per week (a relatively low average), this would require approximately 400 staff hours, the equivalent of 10 full time employees, just to categorize the messages. This is an expenditure that no agency can afford and is, no doubt, the reason that the Navy did not implement the recommendations of the pilot project.

Agencies must maintain their records in organized files that are designed for their operational needs. Agencies that currently have traditional paper files print their electronic mail records, word processing records, spreadsheets, and data base reports so that their files are complete, comprehensible, and in context with related records. Agency functions that have not been automated must be supported by hard copy files, even when some types of related records are generated electronically. Agencies that decide to maintain their records in electronic recordkeeping systems do so for compelling operational needs, not for future researchers. In some cases, such as the State Department example cited by respondents, agencies create automated indexes to hard-copy records rather than digitizing all of the records themselves. In any case, the decision must be based on an analysis of the needs of and benefits to the agency, balanced against available resources. The role of NARA is to provide guidance and regulations that, when properly implemented, will result in agency recordkeeping systems that protect records for their authorized retention period, and, for permanent records, in a format that allows transfer to the National Archives.

If agencies were to maintain their electronic mail and word processing records on electronic information systems that do not provide the necessary records management functions, just for the sake of maintaining them in electronic format as many respondents advocate, the records would be of limited use to both the originating agency and to future researchers. Such a practice would not support agency operations, and researchers would have to search disassociated, unindexed collections of materials for potentially valuable records, which would result in finding a large proportion of irrelevant documents, an inefficient use of research time.

2. Disposition Instructions

a. *Comments.* One agency and a member of the public expressed concern about the GRS 20 disposition instructions. They said that ''delete when no longer needed'' was too vague or too broad. A state archivist also expressed concern that the schedule would authorize destruction of electronic records and related documentation needed for establishing authenticity and legal admissibility of electronic records.

b. *Response.* In response to these concerns, NARA has replaced ''delete when no longer needed'' with ''delete when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes'' for items 1a, 1c, 3b(1), 3b(3), 4, 5, 6, 7, 9, 12a, and 12b. NARA also revised the disposition instruction for item 13 to read ''delete from the word processing system when no longer needed for updating, revision, or convenience of reference,'' and the disposition instruction for item 14 was changed to read ''delete from the e-mail system when no longer needed for convenience of reference.'' In addition, NARA changed the disposition for item 11a to read ''destroy or delete when superseded or obsolete, or upon authorized deletion of the related master file or data base, or upon the destruction of the output of the system if the output has legal value, whichever is latest.''

3. Item 3

a. *Comment.* An agency suggested that item 3, Electronic Versions of Records Scheduled for Disposal, be extended to GRS 17, Cartographic, Aerial Photographic, Architectural, and Engineering Records, and GRS 21, Audiovisual Records.

b. *Response.* Because of the lack of standards for such digitized records at this time, NARA has not expanded this item as suggested.

4. Item 8

a. *Comments.* Four agencies raised questions about the coverage of backups. Two agencies found the distinction between system and security backups to be confusing. One agency suggested that GRS 20 acknowledge that system backups may be records under the Freedom of Information Act, and another agency suggested that the introduction acknowledge that courts have allowed parties to request documents that exist only on system backups. Two other agencies questioned the meaning of ''record copy'' in the definition of system backups in the introduction and recommended adding system backups as a new subitem under item 8. One agency requested that a subitem be added to item 8 to cover unscheduled records, and that the disposition of item 8 be amended to provide that if records with different retention periods are on backup copies, the backup should be kept for the longest retention period. One state archivist stated that the disposition for item 8 is inconsistent with accepted processing practices.

Some of the public respondents to the proposed GRS change also took issue with the item on backups. In their view NARA drew an erroneous distinction between the backups that mirror the ''logical'' format of the system and those that mirror the ''physical'' format. They suggested that all categories of backups are records because they serve the same function of permitting recovery of an electronic record or file if the record or file is damaged or erased from the system, and recommended that item 8 be left unchanged.

b. *Response.* NARA has revised item 8 to reflect some of the comments and to clarify its coverage. Item 8a has been retitled ''Backups for Files'' to eliminate the distinction that formerly was made between system and security backups. This distinction brought about a great deal of confusion that tended to distract from the purpose of the item. Consequently, the new item 8a covers backups, regardless of how they are characterized, that are determined by the creating agency to be Federal records. The reference to classification of the format of backups (''logical'' or ''physical'') was also deleted.

5. Item 13

a. *Comments.* One agency stated that item 13, Word Processing Files, is inappropriate because disposition should be based on content, not media. Another agency suggested that item 13 should provide authorization for deletion of superseded drafts.

b. *Response.* NARA believes that this item responds to a real need. As indicated earlier, the GRS has covered the original version of word processing records since 1988. Over the years many agencies have told NARA that it has proven very useful to them in

conducting their records management programs. By providing authorization for deletion of the word processing copy of documents that are preserved elsewhere in a recordkeeping system, NARA has freed Federal records officers from scheduling the duplicative records in those systems. Consequently, the records officers can concentrate on scheduling the unique electronic records in their agencies.

NARA has not added provisions to this item concerning draft documents. In most cases, drafts are nonrecord materials so no disposition authority is required. In those instances where drafts created on word processing systems are records, as described in NARA regulations (36 CFR 1222.34), the revised GRS 20 will cover them as it covers other records generated electronically. No further authorization is needed in the GRS. NARA will be issuing guidance on agency recordkeeping requirements that includes a discussion of drafts and provides criteria for determining when they are records.

NARA did modify item 13 as a result of numerous meetings and discussions with records officers and other interested parties, and further analysis of recordkeeping requirements. Records must be available to all authorized users and properly managed to ensure their authorized, timely, and appropriate disposition. Documents meeting the definition of record that are only in individuals' word processing directories, rather than agency recordkeeping systems, are not accessible to other staff members. Even accessible network word processing directories are inadequate if they are part of information systems that lack records management functionality. It is critical that agencies instruct their staff members to copy or transfer any word processing documents that are Federal records to paper or electronic recordkeeping systems. Consequently, NARA deleted subitem 13b. This subitem would have authorized deletion of records that were maintained only on the word processing system until the expiration of the retention period authorized by another GRS item or agency schedule. The deletion of item 13b from GRS 20 reinforces the necessity for agencies to properly maintain Federal records in recordkeeping systems.

6. Item 14

a. *Comments.* One agency suggested that item 14, Electronic Mail Records, should authorize deletion of recipients' copies of messages unless the recipient's copy has been designated by the agency as a record. The same agency requested that NARA add a subitem to authorize deletion when no longer needed of routine types of messages, such as meeting announcements and acknowledgments. Another agency suggested that item 14 include definitions of transmission data and receipt data and an agency suggested that GRS 20 address the issue of record status determinations. Two agencies expressed concern that item 14 would require electronic maintenance of electronic mail. Many public respondents objected to item 14 because it permitted hard copy records to be substituted for electronic versions (see comments and response number 1).

b. *Response.* NARA has modified the item and the introduction to GRS 20 to provide more information on transmission and receipt data.

Item 14 also has been modified to drop its prior reference (item 14b) to records maintained on the electronic mail system itself. Just as with word processing records, e-mail records must be maintained in recordkeeping systems that allow accessibility and proper records management. See the response to comments on item 13, above, for further explanation of this change.

Otherwise, NARA has not adopted the suggestions concerning this item. Blanket authorization for deletion of recipients' copies of messages would be inappropriate. Sometimes such copies are unique Federal records. For example, messages received through external systems would not be duplicated elsewhere in the agency. Also, to ensure file integrity, recipients' copies of messages often need to be incorporated into a recordkeeping system in the recipient's office. Agencies are responsible for issuing instructions on identifying record copies of documents, consistent with NARA regulations and guidance. Because the GRS is a records disposition schedule, it is not the appropriate mechanism for addressing records creation issues. NARA will address these issues in standards or guidance dealing with records creation and maintenance. As indicated in the response number 1, GRS 20 does not require maintenance of electronic mail records in electronic form. Item 14 specifically covers electronic mail records converted to paper or microform, as well as those copied for maintenance in electronic recordkeeping systems.

During the past two years NARA has worked closely with Federal agencies on the development of records management guidance concerning electronic mail. NARA staff members have consulted extensively with records managers and information resource officials in major agencies on the development of records management guidance for electronic mail, and, after publication of proposed standards on March 24, 1994 (59 FR 13906), held discussion meetings and made presentations attended by over 840 agency records managers, information resource managers, legal staff, and others. Based on knowledge and experience, NARA believes that implementation of this GRS change, along with revised regulations and NARA guidance, will significantly improve the quality of Federal documentation by appropriate preservation of electronic mail records. NARA has given authority under the Federal Records Act to the Federal agencies to delete electronic mail records from their electronic mail systems *only* after a copy of the full message with names of senders and addresses and date of transmission, and receipts when required, have been preserved elsewhere.

7. Item 15

a. *Comments:* The public comments included a concern that item 15, Spreadsheets, could authorize the destruction of critical information that is in the electronic version of a spreadsheet that would not be in a paper printout. The printout would only contain the results of the computation, not the formulas or other information that was used to reach the results. Such computational information should be preserved with the electronic spreadsheet, particularly when it concerns important budgetary, funding, or other analysis.

b. *Response:* The coverage of item 15, as proposed in October 1994, was not clear. It was not intended to apply to all program-related spreadsheets that were developed for agency use. As the respondents correctly indicated, if this item were to apply to program records generally its application could have resulted in the loss of potentially valuable information that was used to produce a spreadsheet. Consequently, item 15 has been rewritten to clarify the limitation of its coverage. It now authorizes the deletion of electronic spreadsheets only if they support administrative, rather than program, functions or if they were generated by an individual only for background purposes.

Conclusion

The Federal Government generates an incalculable number of paper, electronic, and audiovisual records every day. The vast majority (95–98%)

of these are temporary records and many fit into categories that are common throughout the Government. The GRS is a mechanism mandated by law to provide disposition authorities for such common temporary records. GRS 20 is designed to provide authority for the deletion of common temporary records that are generated by computers. As indicated in the responses to comments above, approval of GRS 20 will not affect unique program records that have been preserved in a recordkeeping system. Federal agency records officers are responsible for scheduling the records that are not covered by the GRS. GRS 20 will allow agencies and NARA to concentrate more resources on unique program records. Approval of the revised GRS 20 will allow NARA to continue to focus attention on electronic records with enduring value by eliminating a large proportion of those without such value from further consideration.

Dated: August 14, 1995.

John W. Carlin,

Archivist of the United States.

Following is the text of GRS 20 and GRS 23.

General Records Schedule 20

Electronic Records

This schedule provides disposal authorization for certain electronic records and specified hard-copy (paper) or microform records that are integrally related to the electronic records.

This schedule applies to disposable electronic records created or received by Federal agencies including those managed for agencies by contractors. It covers records created by computer operators, programmers, analysts, systems administrators, and all personnel with access to a computer. Disposition authority is provided for certain master files, including some tables that are components of data base management systems, and certain files created from master files for specific purposes. In addition, this schedule covers certain disposable electronic records produced by end users in office automation applications. These disposition authorities apply to the categories of electronic records described in GRS 20, regardless of the type of computer used to create or store these records.

GRS 20 does not cover all electronic records. Electronic records not covered by GRS 20 may not be destroyed unless authorized by a Standard Form 115 that has been approved by the National Archives and Records Administration (NARA).

The records covered by several items in this schedule are authorized for erasure or deletion when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes. NARA cannot establish a more specific retention that would be appropriate in all applications. Each agency should, when appropriate, determine a more specific disposition instruction, such as ''Delete after X update cycles'' or ''Delete when X years old,'' for inclusion in its records disposition directives or manual. NARA approval is not needed to set retention periods for records in the GRS that are authorized for destruction when no longer needed.

Items 2a and 1a (in part) of this schedule apply to hard-copy or microform records used in conjunction with electronic files. Item 1 also covers printouts produced to test, use, and maintain master files. Items 10 and 11 of this schedule should be applied to special purpose programs and documentation for disposable electronic records whatever the medium in which such documentation and programs exist.

This schedule has been revised to include electronically-generated records previously covered in General Records Schedule 23, Records Common to Most Offices. The original numbering of the items in GRS 20 has been preserved. The items moved from GRS 23 have been added at the end, except the item covering administrative data bases that has been incorporated into item 3.

Electronic versions of records authorized for disposal elsewhere in the GRS may be deleted under the provisions of item 3 of GRS 20.

See also 36 CFR Part 1234 for NARA regulations on electronic records management.

1. Files/Records Relating to the Creation, Use, and Maintenance of Computer Systems, Applications, or Electronic Records

a. Electronic files or records created solely to test system performance, as well as hard-copy printouts and related documentation for the electronic files/records.

Delete/destroy when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes.

b. Electronic files or records used to create or update a master file, including, but not limited to, work files, valid transaction files, and intermediate input/output records.

Delete after information has been transferred to the master file and verified.

c. Electronic files and hard-copy printouts created to monitor system usage, including, but not limited to, log-in files, password files, audit trail files, system usage files, and cost-back files used to assess charges for system use.

Delete/destroy when the agency determines they are no longer needed for administrative, legal, audit, or other operational purposes.

2. Input/Source Records

a. Non-electronic documents or forms designed and used solely to create, update, or modify the records in an electronic medium and not required for audit or legal purposes (such as need for signatures) and not previously scheduled for permanent retention in a NARA-approved agency records schedule.

Destroy after the information has been converted to an electronic medium and verified, or when no longer needed to support the reconstruction of, or serve as the backup to, the master file, whichever is later.

b. Electronic records, except as noted in item 2c, entered into the system during an update process, and not required for audit and legal purposes.

Delete when data have been entered into the master file or database and verified, or when no longer required to support reconstruction of, or serve as back-up to, a master file or database, whichever is later.

c. Electronic records received from another agency and used as input/source records by the receiving agency, EXCLUDING records produced by another agency under the terms of an interagency agreement, or records created by another agency in response to the specific information needs of the receiving agency.

Delete when data have been entered into the master file or database and verified, or when no longer needed to support reconstruction of, or serve as back up to, the master file or database, whichever is later.

d. Computer files or records containing uncalibrated and unvalidated digital or analog data collected during observation or measurement activities or research and development programs and used as input for a digital master file or database.

Delete after the necessary data have been incorporated into a master file.

3. Electronic Versions of Records Scheduled for Disposal

a. Electronic versions of records that are scheduled for disposal under one or more items in GRS 1–16, 18, 22, or 23; EXCLUDING those that replace or

duplicate the following GRS items: GRS 1, items 21, 22, 25f; GRS 12, item 3; and GRS 18, item 5.

Delete after the expiration of the retention period authorized by the GRS or when no longer needed, whichever is later.

b. Electronic records that support administrative housekeeping functions when the records are derived from or replace hard copy records authorized by NARA for destruction in an agency-specific records schedule.

(1) When hard copy records are retained to meet recordkeeping requirements.

Delete electronic version when the agency determines that it is no longer needed for administrative, legal, audit, or other operational purposes.

(2) When the electronic record replaces hard copy records that support administrative housekeeping functions.

Delete after the expiration of the retention period authorized for the hard copy file, or when no longer needed, whichever is later.

(3) Hard copy printouts created for short-term administrative purposes.

Destroy when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes.

4. Data Files Consisting of Summarized Information

Records that contain summarized or aggregated information created by combining data elements or individual observations from a single master file or data base that is disposable under a GRS item or is authorized for deletion by a disposition job approved by NARA after January 1, 1988, EXCLUDING data files that are created as disclosure-free files to allow public access to the data which may not be destroyed before securing NARA approval.

Delete when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes.

(**Note:** Data files consisting of summarized information which were created from a master file or data base that is unscheduled, or that was scheduled as permanent but no longer exists or can no longer be accessed, may not be destroyed before securing NARA approval.)

5. Records Consisting of Extracted Information

Electronic files consisting solely of records extracted from a single master file or data base that is disposable under GRS 20 or approved for deletion by a NARA-approved disposition schedule, EXCLUDING extracts that are:

(a) Produced as disclosure-free files to allow public access to the data; or

(b) Produced by an extraction process which changes the informational content of the source master file or data base; which may not be destroyed before securing NARA approval. For print and technical reformat files see items 6 and 7 of this schedule respectively.

Delete when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes.

(**Notes:** (1) Records consisting of extracted information that were created from a master file or data base that is unscheduled, or that was scheduled as permanent but no longer exists or can no longer be accessed may not be destroyed before securing NARA approval. (2) See item 12 of this schedule for other extracted data.)

6. Print File

Electronic file extracted from a master file or data base without changing it and used solely to produce hard-copy publications and/or printouts of tabulations, ledgers, registers, and statistical reports.

Delete when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes.

7. Technical Reformat File

Electronic file consisting of data copied from a complete or partial master file or data base made for the specific purpose of information interchange and written with varying technical specifications, EXCLUDING files created for transfer to the National Archives.

Delete when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes.

8. Backups of Files

Electronic copy, considered by the agency to be a Federal record, of the master copy of an electronic record or file and retained in case the master file or database is damaged or inadvertently erased.

a. File identical to records scheduled for transfer to the National Archives.

Delete when the identical records have been captured in a subsequent backup file or when the identical records have been transferred to the National Archives and successfully copied.

b. File identical to records authorized for disposal in a NARA-approved records schedule.

Delete when the identical records have been deleted, or when replaced by a subsequent backup file.

9. Finding Aids (or Indexes)

Electronic indexes, lists, registers, and other finding aids used only to provide access to records authorized for destruction by the GRS or a NARA-approved SF 115, EXCLUDING records containing abstracts or other information that can be used as an information source apart from the related records.

Delete with related records or when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes, whichever is later.

10. Special Purpose Programs

Application software necessary solely to use or maintain a master file or database authorized for disposal in a GRS item or a NARA-approved records schedule, EXCLUDING special purpose software necessary to use or maintain any unscheduled master file or database or any master file or database scheduled for transfer to the National Archives.

Delete when related master file or database has been deleted.

11. Documentation

a. Data systems specifications, file specifications, codebooks, record layouts, user guides, output specifications, and final reports (regardless of medium) relating to a master file or data base that has been authorized for destruction by the GRS or a NARA-approved disposition schedule.

Destroy or delete when superseded or obsolete, or upon authorized deletion of the related master file or data base, or upon the destruction of the output of the system if the output is needed to protect legal rights, whichever is latest.

b. Copies of records relating to system security, including records documenting periodic audits or review and recertification of sensitive applications, disaster and continuity plans, and risk analysis, as described in OMB Circular No. A–130.

Destroy or delete when superseded or obsolete.

(**Notes:** (1) Documentation that relates to permanent or unscheduled master files and data bases is not authorized for destruction by the GRS. (2) See item 1a of this schedule for documentation relating to system testing.)

12. Downloaded and Copied Data

Derived data and data files that are copied, extracted, merged, and/or calculated from other data generated within the agency, when the original data is retained.

a. Derived data used for ad hoc or one-time inspection, analysis or review, if the derived data is not needed to support the results of the inspection, analysis or review.

Delete when the agency determines that they are no longer needed for

administrative, legal, audit, or other operational purposes.

b. Derived data that provide user access in lieu of hard copy reports that are authorized for disposal.

Delete when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes.

c. Metadata or reference data, such as format, range, or domain specifications, which is transferred from a host computer or server to another computer for input, updating, or transaction processing operations.

Delete from the receiving system or device when no longer needed for processing.

(**Note:** See item 5 of this schedule for other extracted data.)

13. Word Processing Files

Documents such as letters, memoranda, reports, handbooks, directives, and manuals recorded on electronic media such as hard disks or floppy diskettes after they have been copied to an electronic recordkeeping system, paper, or microform for recordkeeping purposes.

Delete from the word processing system when no longer needed for updating or revision.

14. Electronic Mail Records

Senders' and recipients' versions of electronic mail messages that meet the definition of Federal records, and any attachments to the record messages after they have been copied to an electronic recordkeeping system, paper or microform for recordkeeping purposes.

Delete from the e-mail system after copying to a recordkeeping system.

(Note: Along with the message text, the recordkeeping system must capture the names of sender and recipients and date (transmission data for recordkeeping purposes) and any receipt data when required.)

15. Electronic Spreadsheets

Electronic spreadsheets generated to support administrative functions or generated by an individual as background materials or feeder reports.

a. When used to produce hard copy that is maintained in organized files.

Delete when no longer needed to update or produce hard copy.

b. When maintained only in electronic form.

Delete after the expiration of the retention period authorized for the hard copy by the GRS or a NARA-approved SF 115. If the electronic version replaces hard copy records with differing retention periods and agency software does not readily permit selective deletion, delete after the longest retention period has expired.

General Records Schedule 23

Records Common to Most Offices Within Agencies

This schedule provides for the disposal of certain records common to most offices in Federal agencies. It covers administrative subject files; facilitative records such as suspense files, tracking and control records, calendars, and indexes; and transitory documents. This schedule does not apply to any materials that the agency has determined to be nonrecord or to materials such as calendars or work schedules claimed as personal.

Office Administrative Files described under item 1 are records retained by an originating office as its record of initiation of an action, request, or response to requests for information. This item may be applied only to separate administrative files containing such records as copies of documents submitted to other offices for action including budget feeder documents, purchase orders, training requests. Item 1 may not be applied to files that also contain program records, and it may not be applied by an office that receives and takes action on documents submitted by other offices.

Several items covering electronic records produced on stand-alone or networked personal computers (such as word processing files, administrative data bases, and spreadsheets) that were previously in this schedule have been moved to General Records Schedule 20, Electronic Records. To preserve the previous numbering of the items in GRS 23, the item numbers that have been moved have been reserved. The disposition of records described in this schedule that are created in electronic form is governed by GRS 20, item 3.

1. Office Administrative Files

Records accumulated by individual offices that relate to the internal administration or housekeeping activities of the office rather than the functions for which the office exists. In general, these records relate to the office organization, staffing, procedures, and communications; the expenditure of funds, including budget records; day-to-day administration of office personnel including training and travel; supplies and office services and equipment requests and receipts; and the use of office space and utilities. They may also include copies of internal activity and workload reports (including work progress, statistical, and narrative reports prepared in the office and forwarded to higher levels) and other materials that do not serve as unique documentation of the programs of the office.

Destroy when 2 years old, or when no longer needed, whichever is sooner.

(Note: This schedule is not applicable to the record copies of organizational charts, functional statements, and related records that document the essential organization, staffing, and procedures of the office, which must be scheduled prior to disposition by submitting an SF 115 to NARA.)

2–4. Reserved.

5. Schedules of Daily Activities

Calendars, appointment books, schedules, logs, diaries, and other records documenting meetings, appointments, telephone calls, trips, visits, and other activities by Federal employees while serving in an official capacity, EXCLUDING materials determined to be personal.

a. Records containing substantive information relating to official activities, the substance of which has not been incorporated into official files, EXCLUDING records relating to the official activities of high government officials (see note).

Destroy or delete when 2 years old.

(Note: High level officials include the heads of departments and independent agencies; their deputies and assistants; the heads of program offices and staff offices including assistant secretaries, administrators, and commissioners; directors of offices, bureaus, or equivalent; principal regional officials; staff assistants to those aforementioned officials, such as special assistants, confidential assistants, and administrative assistants; and career Federal employees, political appointees, and officers of the Armed Forces serving in equivalent or comparable positions. Unique substantive records relating to the activities of these individuals must be scheduled by submission of an SF 115 to NARA.)

b. Records documenting routine activities containing no substantive information and records containing substantive information, the substance of which has been incorporated into organized files.

Destroy or delete when no longer needed for convenience of reference.

(Note: GRS 20, item 3, authorizes deletion of electronic records described by subitems a and b of this item.)

6. Suspense Files

Documents arranged in chronological order as a reminder that an action is required on a given date or that a reply to action is expected and, if not received, should be traced on a given date.

a. A note or other reminder to take action.

Destroy after action is taken.

b. The file copy or an extra copy of an outgoing communication, filed by the date on which a reply is expected.

Withdraw documents when reply is received. (1) If suspense copy is an extra copy, destroy immediately. (2) If suspense copy is the file copy, incorporate it into the official files.

7. Transitory Files

Documents of short-term interest which have no documentary or evidential value and normally need not be kept more than 90 days. Examples of transitory correspondence are shown below.

a. Routine requests for information or publications and copies of replies which require no administrative action, no policy decision, and no special compilation or research for reply.

b. Originating office copies of letters of transmittal that do not add any information to that contained in the transmitted material, and receiving office copy if filed separately from transmitted material.

c. Quasi-official notices including memoranda and other records that do not serve as the basis of official actions, such as notices of holidays or charity and welfare fund appeals, bond campaigns, and similar records.

Destroy when 3 months old, or when no longer needed, whichever is sooner.

8. Tracking and Control Records

Logs, registers, and other records used to control or document the status of correspondence, reports, or other records that are authorized for destruction by the GRS or a NARA-approved SF 115.

Destroy or delete when no longer needed.

9. Finding Aids (or Indexes)

Indexes, lists, registers, and other finding aids used only to provide access to records authorized for destruction by the GRS or a NARA-approved SF 115, EXCLUDING records containing abstracts or other information that can be used as an information source apart from the related records.

Destroy or delete with the related records or sooner if no longer needed.

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Part IV

Environmental Protection Agency

40 CFR Parts 144 and 146

Class V Wells—Regulatory Determination and Minor Revisions to the Underground Injection Control Regulations; Technical Correction to the Regulations for Class I Wells; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144 and 146

[FRL–5280–5]

RIN 2040–AB83

Class V Wells—Regulatory Determination and Minor Revisions to the Underground Injection Control Regulations; Technical Correction to the Regulations for Class I Wells

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Today's proposal presents the findings of the Environmental Protection Agency (EPA) with regard to the need for additional Underground Injection Control (UIC) regulations for Class V wells. Typically, Class V wells are shallow wells which inject a variety of fluids directly below the land surface. They include shallow non-hazardous industrial waste injection wells, septic systems, storm water drainage wells, and assorted other wells that have been found in some instances to emplace potentially harmful levels of contaminants into and above underground sources of drinking water. All Class V wells are currently authorized by rule provided they do not endanger underground sources of drinking water (USDWs) and meet certain minimum requirements.

Because EPA has found that some of these wells pose environmental hazards, EPA is developing a comprehensive strategy to manage these hazards. As part of this strategy, EPA will continue to authorize Class V wells by rule but will aggressively use the authority provided by the current regulations to achieve the closure of Class V wells which may endanger USDWs and the proper management of other Class V wells.

EPA is also proposing some minor changes to the UIC regulations that would make it easier for the regulated community to understand who is subject to the current Class V UIC requirements and what these requirements mean to the owners of a specific type of well.

DATES: EPA will accept public comment, in writing, on the proposed regulations until October 27, 1995.

A public hearing has been tentatively scheduled for October 18, 1995, from 1 pm to 4 pm EST. Requests for a public hearing must be received by September 27, 1995. When requesting a public hearing, please state the nature of the issues proposed to be raised. EPA expressly reserves the right to cancel this hearing unless a significant degree of public interest is evidenced by the above date.

ADDRESSES: Address written comments to UIC Amendments, Water Docket (mail code 4101), USEPA, 401 M Street, SW, Washington, DC 20460. Please submit all references cited in your comments. Facsimiles (faxes) cannot be accepted. EPA would appreciate 1 original and 3 copies of your comments (including any references). Commenters who would like EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope.

The hearing will be held in the EPA Auditorium of the EPA Training Center, Waterside Mall, 401 M Street, SW, Washington DC.

The proposed rule and supporting documents, including public comments, are available for review in the Water Docket at the above address. For information on how to access Docket materials, please call (202) 260–3027 between 9 a.m. and 3:30 p.m.

Requests for a public hearing should be addressed to Lee Whitehurst, EPA, Office of Ground Water and Drinking Water (mail code 4602), 401 M Street, SW, Washington DC.

FOR FURTHER INFORMATION CONTACT: Lee Whitehurst, Underground Injection Control Branch, Office of Ground Water and Drinking Water (mailcode 4602), EPA, 401 M Street, SW, Washington DC, 20460. Phone: 202–260–5532.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Background
A. Statutory and Regulatory Framework
1. Categories of Class V Wells
2. Requirements Applicable to Class V Wells
B. Report to Congress on Class V Wells
C. Consent Decree with the Sierra Club
II. Proposed Agency Determination on the Adequacy of Current Regulations
A. Implementation of Current Requirements
B. State Ground Water Protection Programs
C. Assessment of the Need for Additional Class V Regulations
1. Beneficial Use Wells
2. Fluid Return Wells
3. Sewage Treatment Effluent Wells
4. Cesspools
5. Septic Systems
6. Experimental Technology Wells
7. Drainage Wells
8. Mine Backfill Wells
9. In Situ and Solution Mining Wells
10. Industrial Waste Discharge Wells
III. EPA's Strategy for the Management of Class V Wells
A. Technical Assistance
1. Program Management Implementation Guidance
2. Technical Guidances
a. Industrial Waste Discharge Well Closure Guidance
b. Septic System Guidance
c. Agricultural Drainage Well Guidance
d. Storm Water Drainage Well Guidance
B. Outreach and Education
C. Compliance Assurance Initiative
IV. Proposed Minor Amendments to the UIC Regulations in 40 CFR Part 144
A. Proposed Amendments to Subpart A—General Provisions
1. § 144.1(g)—Specific Inclusions and Exclusions
2. § 144.3—Definitions
3. § 144.6—Classification of Wells
B. Proposed Amendments to Subpart C—Authorization of Underground Injection by Rule
1. § 144.23—Class IV Wells
2. § 144.24—Class V Wells
3. § 144.26—Inventory requirements
V. Proposed Minor Amendments to UIC Regulations in 40 CFR Part 146
A. Proposed Amendments to Subpart A—General Provisions
1. § 146.3—Definitions
2. § 146.5—Classification of Injection Wells
3. § 146.10—Plugging and Abandoning Class I, II, III, IV and V Wells
VI. Solicitation of Comments
A. General Solicitation
B. Specific Comment Solicitations
VII. Regulatory Impact
A. Executive Order 12866
B. Paperwork Reduction Act
C. Impact on Small Businesses
D. Unfunded Mandates
E. Effect on States with Primacy

I. Background

A. Statutory and Regulatory Framework

Class V wells are regulated under the authority of Part C of the Safe Drinking Water Act (SDWA or the Act) (42 U.S.C. 300h *et seq.*). The SDWA is designed to protect the quality of drinking water in the United States, and Part C specifically mandates the regulation of underground injection of fluids through wells. The Agency has promulgated a series of underground injection control (UIC) regulations under this authority.

Section 1421 of the Act requires EPA to propose and promulgate regulations specifying minimum requirements for State programs to prevent underground injection that endangers drinking water sources. EPA promulgated administrative and permitting regulations, now codified in 40 CFR parts 144 and 146, on May 19, 1980 (45 FR 33290), and technical requirements in 40 CFR part 146 on June 24, 1980 (45 FR 42472). The regulations were subsequently amended on August 27, 1981 (46 FR 43156), February 3, 1982 (47 FR 4992), January 21, 1983 (48 FR 2938), April 1, 1983 (48 FR 14146), July 26, 1988 (53 FR 28118), December 3, 1993 (58 FR 63890) and June 29, 1995 (60 FR 33926).

Section 1422 of the Act provides that States may apply to EPA for primary responsibility to administer the UIC program (those States receiving such authority are referred to as ''Primacy States''). Where States do not seek this responsibility or fail to demonstrate that they meet EPA's minimum requirements, EPA is required to prescribe, by regulation, a UIC program for such States. These direct implementation (DI) programs were promulgated in two phases, on May 11, 1984 (49 FR 20138) and November 15, 1984 (49 FR 45308).

1. Categories of Class V Wells

The UIC regulations define and establish five classes of injection wells. Class I wells are used to inject hazardous and non-hazardous waste beneath the lowermost formation containing a USDW within one-quarter mile of the well bore. Class II wells are used to inject fluids associated with oil and natural gas recovery and storage of liquid hydrocarbons. Class III wells are used in connection with the solution mining of minerals. Class IV wells are used to inject hazardous or radioactive wastes into or above a formation that is within one-quarter mile of a USDW. (Class IV wells are generally prohibited by 40 CFR 144.13.) Class V wells are defined in the regulations as any well not included in Classes I through IV.

Class V injection wells are generally shallow waste disposal wells, stormwater and agricultural drainage systems, or other devices that are used to release fluids either directly into USDWs or into the shallow subsurface that overlies USDWs. In some instances, the fluids released by these wells contain elevated concentrations of contaminants that may endanger drinking water supplies. EPA estimates that more than one million Class V wells currently exist in the United States. These wells are located in virtually every State, especially in unsewered areas where the population is likely to depend on ground water. Frequently, Class V wells are designed as no more than shallow holes or septic tank and leachfield combinations intended for sanitary waste disposal. Such systems are often used for the disposal of industrial wastes or other fluids that may have not been treated, potentially releasing elevated levels of contaminants directly into the same ground water that may be used as a drinking water supply by surrounding residences and communities. Such wells are commonly located at automobile service stations, print shops, dry cleaners, shopping centers, equipment manufacturers, and other commercial and industrial establishments.

Today, EPA is proposing to retain the current definition of Class V wells. However, the regulations also contain a non-inclusive list of 16 types of Class V wells (§ 146.5). This list was further divided into 32 categories in the *Report to Congress* on Class V Wells, which EPA published in 1987 in response to a mandate of the SDWA amendments of 1986. The Report to Congress drew the distinctions between the well types based on the design of the well, in some instances, and on the types of fluids injected, in others. In reviewing the Report to Congress, the Agency has determined that some of these distinctions are of little consequence as far as the risk posed by the wells and the appropriate management scheme. Therefore, for today's proposal the Agency has grouped Class V wells in ten more appropriate categories which combine together wells that are mostly similar both in terms of the nature of fluids that they inject and their potential to endanger USDWs.

The 10 general categories of Class V wells are:

- ''Beneficial Use Wells'' which include a variety of well types used either to improve the quality or flow of aquifers or to provide some other benefit, such as preventing salt water intrusion or controlling subsidence.
- ''Fluid Return Wells'' which are used to inject spent fluids associated with the production of geothermal energy for space heating or electric power, the operation of a heat pump, the extraction of minerals, or aquaculture.
- ''Sewage Treatment Effluent Wells'' which are used to inject effluent from publicly or privately owned treatment facilities.
- ''Cesspools'' which are wells that receive untreated sanitary waste. They may have open bottoms, and are typically located in areas not served by sanitary sewers. Under today's proposal, only those cesspools having the capacity to serve 20 persons or more a day would be considered Class V injection wells subject to the UIC regulations [1].
- ''Septic Systems'' which are wells comprised of septic tanks and fluid distribution systems (e.g., leachfields) used to dispose of sanitary waste only. Only those septic systems having the capacity to serve 20 or more persons per day would be considered Class V injection wells subject to the UIC regulations [1].
- ''Experimental Technology Wells'' which include any injection well used as part of an unproven subsurface injection technology.
- ''Drainage Wells'' which consist of a variety of wells used to drain surface and subsurface fluids including storm water and agricultural runoff.
- ''Mine Backfill Wells'' which are used to place slurries of sand, gravel, cement, mill tailings/refuse, or fly ash into underground mines. Mine backfill wells serve a variety of purposes ranging from subsidence prevention to control of underground fires.
- ''In-situ and Solution Mining Wells'' which are used to liberate fossil fuels from the geologic formation which contains them or to bring minerals from underground deposits to the surface. They do not include wells specifically listed as Class III wells under § 146.5.
- ''Industrial Waste Discharge Wells'' which are used to inject wastewaters generated by industrial, commercial, and service establishments.

Table 1 shows how these categories relate to the listing of wells in § 146.5(e) of the current regulations and the Class V well types addressed in EPA's 1987 Report to Congress.

TABLE 1—CATEGORIES OF CLASS V INJECTION WELLS

Category in today's proposal	Injection wells in category	Current § 146.5	Corresponding injection wells in report to congress
Beneficial Use	Aquifer Recharge	(e)(6)	5R21 (Aquifer Recharge).
	Salt Water Intrusion Barrier	(e)(7)	5B22 (Saline Water Intrusion Barrier).

[1] **Note:** The current regulations exclude individual single family and non-residential cesspools and septic systems having the capacity to serve fewer than 20 persons per day. For reasons explained in this preamble, the distinction between residential and non-residential sanitary waste disposal systems is unnecessary and could be eliminated by applying the 20 person cut-off to all systems.

TABLE 1—CATEGORIES OF CLASS V INJECTION WELLS—Continued

Category in today's proposal	Injection wells in category	Current § 146.5	Corresponding injection wells in report to congress
	Subsidence Control	(e)(10)	5S23 (Subsidence Control).
	Aquifer Storage and Recovery	Not Listed	5X26 (Aquifer Remediation Related).
	Subsurface Enfironmental Remediation	(e)(6).	
Fluid Return	Wells used to inject spent brines after the extraction of minerals.	(e)(14)	5A6 (Direct Heat Return). 5A8 (Ground-water Aquaculture Return Flow).
	Wells used to inject heat pump return fluids	(e)(1)	5A5 (Electric Power Return). 5X16 (Spent-Brine Return Flow).
	Wells used to inject fluids that have undergone chemical alteration during the production of geothermal energy for heating, aquaculture, or production of electric power.	(e)(12)	5A7 (Heat Pump/Air Conditioning Return Flow).
Sewage Treatment Effluent.	Wells used to inject effluent from POTWs, or privately owned treatment works receiving solely sanitary sewage.	Not Listed	5W12 (Domestic Wastewater Treatment Plant Effluent Disposal).
Cesspools	Cesspools having the capacity to serve 20 persons or more per day and used solely for the subsurface emplacement of sanitary waste.	(e)(2)	5W9 (Untreated Sewage Waste (Disposal). 5W10 (Cesspools).
Septic Systems	Septic tank and fluid distribution system having the capacity to serve 20 persons or more per day and used solely for the subsurface emplacement of sanitary waste.	(e)(9)	5W11 (Septic Systems—Undifferentiated Disposal). 5W32 (Septic Systems-Drainfield Disposal). 5W31 (Septic Systems—Well Disposal).
Experimental Technology.	Wells used as part of unproven subsurface injection technologies other than waste disposal.	(e)(15)	5X25 (Experimental Technology).
Drainage	Wells used to drain surface and subsurface fluids, including agricultural drainage and storm water runoff, other than runoff from loading dock areas, storage areas, and process areas.	(e)(4)	5D2 (Stormwater Drainage). 5F1 (Agricultural Drainage). 5D3 (Improved Sinkholes). 5G30 (Special Drainage).
Mine Backfill	Wells used to inject a mixture of water, air, and sand, mill tailings, or other solids into mined out portions of subsurface mines.	(e)(8)	5X13 (Mining, Sand, or Other Backfill).
In Situ and Solution Mining.	Wells used to inject fluids for the purpose of producing minerals or energy, which are not Class II or III wells.	(e)(13) (e)(16)	5X14 (Solution Mining). 5X15 (In situ Fossil Fuel Recovery).
Industrial Waste Discharge.	Wells used to inject wastewaters generated by industrial, commercial, and service establishments and which are not included in the proposed § 146.5 e(1) through e(9).	(e)(5)	5X27 (Other). 5D4 (Industrial Drainage). 5W20 (Industrial Process Water and Waste Disposal). 5X28 (Automobile Service Station Disposal). 5X17 (Air Scrubber Waste Disposal). 5X18 (Water Softener Regeneration Brine Disposal). 5X19 (Abandoned Drinking Water Wells, if used for the subsurface emplacement of industrial or commercial wastes not injected in above categories of Class V wells).

2. Requirements Applicable to Class V Wells

Class V wells are currently authorized by rule (§ 144.24 (a)). Well authorization under this section expires upon the effective date of a permit issued pursuant to §§ 144.25, 144.31, 144.33 or 144.34, or upon proper closure of the well. The current regulations subject Class V wells to the general statutory and regulatory prohibitions against endangerment of USDWs, as well as some specific requirements. Under § 144.12(a), owners or operators of all UIC wells, including Class V injection wells, are prohibited from engaging in any injection activity that allows the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 142 or may otherwise adversely affect human health. Sections 144.12(c) and (d) prescribe mandatory and discretionary actions to be taken by the Director if a well may not be in compliance with § 144.12(a). Specifically, the Director must choose between requiring the injector to apply for an individual permit, ordering such action as closure of the well to prevent endangerment, or taking an enforcement action. As described in section II.A below, EPA and the States have effectively used these authorities to control priority Class V wells.

Owners or operators of Class V injection wells must also submit basic

inventory and assessment information under § 144.26. In addition, Class V wells are subject to the general program requirements of § 144.25 under which the Director may require a permit, if necessary, to protect USDWs. Moreover, under § 144.27, EPA may require owners or operators of any Class V well, in EPA administered programs, to submit additional information deemed necessary to protect USDWs. Owners or operators who fail to submit the information required under §§ 144.26 and 144.27 are prohibited from using their injection wells.

B. Report To Congress on Class V Wells

In accordance with the 1986 Amendments to the SDWA (42 U.S.C. 300h–5(b)), EPA summarized information on 32 categories of Class V wells in a Report to Congress entitled Class V Injection Wells—Current Inventory; Effects on Ground Water; and Technical Recommendations, September 1987 (EPA Document Number 570/9–87–006). This report presents a national overview of Class V injection practices and State recommendations for Class V design, construction, installation, and siting requirements. These State recommendations, however, did not give EPA a clear mandate on how to handle Class V wells. For any given type of well, the recommendations can vary broadly and are rarely made by more than two or three States. For example, the recommendations for septic systems range from further studies (3 States) to State-wide ground water monitoring (1 State). For industrial waste water wells, some States recommend immediate action and closure while others recommend monitoring and ground water evaluation studies.

C. Consent Decree with the Sierra Club

On December 30, 1993, the Sierra Club filed a complaint against EPA in the United States District Court for the District of Columbia alleging that EPA failed to comply with section 1421 of the SDWA regarding publication of proposed and final regulations for Class V injection wells. In particular, the complaint alleges that EPA's current regulations regarding Class V wells do not meet the SDWA's statutory requirements to ''prevent underground injection which endangers drinking water sources.'' (Complaint, ¶15)

EPA entered into a consent decree with the Sierra Club which provides that no later than August 15, 1995, the Administrator shall sign a notice to be published in the **Federal Register** proposing regulatory action that fully discharges the Administrator's rulemaking obligations under section 1421 of the SDWA, 42 U.S.C. 300h, with respect to Class V injection wells. Under the consent decree in this notice, EPA must (1) propose additional regulations with respect to all Class V injection wells, (2) propose a decision that no further rulemaking for these wells is necessary, or (3) propose additional regulations for some Class V injection wells and a decision that no further rulemaking is necessary for the remaining wells (Consent Decree, ¶2). The consent decree further provides that, no later than November 15, 1996, the Administrator shall sign a final rulemaking notice to be published in the **Federal Register** fully discharging the Administrator's rulemaking obligations under section 1421 with respect to Class V injection wells (Consent Decree, ¶3). This proposal is intended to fulfill EPA's initial obligation under the consent decree.

II. Proposed Agency Determination on the Adequacy of Current Regulations

When EPA promulgated the UIC regulations in 1980, little was known about the Class V injection well universe, and EPA anticipated that requirements similar to the very specific requirements applicable to Class I, II, and III would eventually be promulgated. Therefore, in § 144.24 the Agency authorized Class V injection wells by rule ''until further requirements under future regulations become applicable.''

Several factors had to be considered in deciding whether such ''further requirements'' are in fact necessary. Important among these factors is the way in which EPA and the States have been able to use current authorities to control Class V wells and the concurrent development of State ground water protection programs.

A. Implementation of Current Requirements

Since the mid 1980's, EPA and State UIC programs have been actively implementing existing requirements for Class V wells, including the endangerment prohibition in § 144.12, in order to protect USDWs. For example, State UIC programs and EPA directly implemented programs have used current authorities to require owners or operators of Class V wells deemed to have the potential to endanger USDWs to obtain permits so that the wells could be subject to additional requirements. During fiscal years 1991 through 1994, EPA and States issued more than 4,000 permits for existing and new Class V wells.

Additionally, both States and EPA have been actively identifying Class V injection well violations and undertaking enforcement actions to ensure compliance with the endangerment prohibition. For example, during fiscal years 1991 through 1994, EPA and the States conducted more than 20,000 inspections of Class V wells. These inspections led to the discovery of more than 8,000 Class V injection well violations. EPA and States responded to these violations with more than 4,500 enforcement actions against owners and operators of endangering Class V injection wells. In some of these enforcement actions, EPA has taken the position that industrial waste disposal wells used to inject fluids exceeding the MCL were in violation of § 144.12. In one such action, EPA issued a general Administrative Order on Consent to 10 major petroleum marketing companies. As a result of the order, penalties totaling more than $830,000 were collected and over 1,300 endangering Class V wells were closed.

States and EPA have also required other endangering Class V wells to close in order to protect USDWs. For example, during fiscal years 1991 through 1994, EPA and States reported that more than 2,500 endangering Class V wells were closed.

B. State Ground Water Protection Programs

In addition to their efforts in implementing the UIC program, States have been actively developing more comprehensive ground water protection programs. These State ground water protection efforts are placing greater emphasis on prevention of contamination and not just remediating or controlling specific sources of contamination. Such efforts help to control the threats associated with several categories of Class V wells.

Two notable examples of general ground water protection programs being implemented by the States include Comprehensive State Ground Water Protection Programs (CSGWPPs) and the Wellhead Protection Program (WHPP). Under a new EPA-State initiative, many States are developing CSGWPPs which provide States the flexibility to set priorities and focus resources on protecting USDWs from potential sources of contamination, including Class V wells. Eleven States and two tribes are currently very active in developing CSGWPP programs, while most States have taken the initial steps toward their development.

Under SDWA section 1428, each State must prepare and submit a WHPP to protect ground water that supplies wells

and well fields that support public drinking water systems. The programs are implemented primarily at the State level, with municipalities implementing programs that reflect State requirements or incentives. Under a WHPP, a State or locality delineates the wellhead protection area; identifies sources of contamination in the wellhead protection area; and develops management approaches. WHPP are a means to identify Class V wells within wellhead protection areas and can serve as a mechanism to institute pollution prevention measures, best management practices, or well closures. The Program also can be used to set priorities among permits and enforcement actions, and provide guidance and outreach materials to owners or operators of potential contamination sources. As of late 1992, approximately 20 States and territories had received EPA approval of their WHPP. By mid-1995, approximately three-quarters of the States and territories—40 in all—had approved Programs.

The State of Massachusetts is an example of how current UIC authorities in the context of their ground water protection efforts can be used to address Class V wells. The Division of Water Supply within the Massachusetts Department of Environmental Protection (MDEP) has operated the UIC program in the State since 1989 with a limited UIC staff. In order to address the risks of Class V injection wells, Massachusetts has undertaken both outreach efforts to industry and coordination with municipal officials regarding key elements of its ground water protection strategy. These efforts have been further supported with an inspection and enforcement program targeting high priority violators.

For example, in 1991, MDEP worked with building code officials and law makers to revise the State's Plumbing Code. The code now prohibits auto service stations, vehicle maintenance facilities and other facilities which generate liquid hazardous waste from maintaining floor drains which discharge to the ground. These regulated facilities must now either connect their floor drain to a holding tank or a municipal sewer, or seal their floor drain—a major step in the protection of ground water drinking supplies.

In addition, MDEP is using its wellhead protection regulations to impose certain zoning and non-zoning land use controls to protect new municipal water wells. In particular, the regulations state that a town seeking approval to construct a new well must prohibit the connection of floor drains to subsurface disposal systems in industrial and commercial process areas or hazardous material/waste storage areas within well head protection areas.

Other States have shown a great deal in interest in the development of EPA's proposed Class V management strategy and have expressed a commitment to work with EPA in achieving appropriate control of Class V wells using State solutions. This commitment will be finalized in EPA/State management agreements and through Regional/State enforcement agreements.

C. Assessment of the Need for Additional Class V Regulations

In light of the considerations described above, the Agency has analyzed the need for additional federal regulations for each well category described in section I.A.1 of this preamble.

The Agency used two criteria in evaluating the different categories of Class V wells to determine whether any category warranted additional regulation: The potential to endanger USDWs and the anticipated effectiveness of additional federal regulation under the UIC program in preventing endangerment to USDWs.

For wells with a low or no potential to contaminate USDWs based on the quality of injected fluids, the Agency considers that existing regulations provide sufficient authorities to handle the few cases where mismanagement of one of these wells could create an endangerment situation.

To assess the need for additional regulation under the UIC program for the other wells, EPA was guided by the following principles.

(1) Additional Federal UIC regulations are not necessary where adequate State or local regulations are already in place.

(2) Additional Federal UIC regulations are not necessary where the Class V wells are not the principal source of endangerment from a widespread environmental problem.

(3) Additional Federal UIC regulations are not necessary where endangerments are localized problems, e.g., wells which are found only in one or two counties in one or two States. For these wells EPA will work with the States if necessary to bring about better controls.

(4) Additional Federal UIC regulations are not necessary where other federal programs address the endangerment caused by certain Class V wells.

Applying these principles, the Agency decided to address the risk posed by the 10 Class V well categories listed in the proposed regulation as follows:

1. Beneficial Use Wells

''Beneficial use'' wells include a variety of well types used either to improve the quality or flow of aquifers or to provide some other benefit, such as salt water intrusion prevention or subsidence control. The Agency recognizes that, as a group, beneficial use wells are diverse and have a varying potential to endanger USDWs. The 1987 Report to Congress concluded that the USDW contamination potential of these wells ranges from low to high, depending on the particular type of well.

Salt water intrusion barrier wells have a low potential to contaminate USDWs because they generally inject fluids of equivalent or better quality than the fluids that naturally exist in the injection zone. Based on typical injectate characteristics and the possibilities for dilution, injection from these wells does not occur in sufficient volumes to increase contaminant concentrations in ground water (Report to Congress, p. 4–334).

Subsidence control wells, used to control the sudden sinking of the earth's surface resulting from excessive ground water withdrawal, also have a low potential to endanger USDWs. These wells typically inject fluids of high quality, and typical well construction, operation, and maintenance would not allow fluid injection or migration into unintended zones (Report to Congress, p. 4–342).

The USDW contamination potential of most aquifer recharge wells also is low, because injection fluids are usually of equal or better quality than receiving fluids and because typical well construction, operation, and maintenance would not allow contamination of unintended zones (Report to Congress, p. 4–324). However, some aquifer recharge wells may pose a moderate to high threat of USDW contamination, because the quality of the fluid injected may be poor in some cases and because some aquifer recharge wells inventoried by EPA do not appear to be properly designed, constructed, and operated. For example, in Texas, many recharge wells are operated by farmers as dual purpose irrigation supply/injection wells to drain the land and recharge underlying aquifers; water injected into these wells may contain nitrates, phosphorus, pesticides, herbicides, pathogens, metals, and total dissolved solids. The Agency believes that, in general, recharge wells have impacts similar to those of agricultural drainage wells and the reasons for not proposing additional regulations for these types of wells are

similar to those described under ''Drainage Wells'' below. In Florida, ''connector'' wells, specifically designed to allow communication between the surficial perched aquifer and the deeper supply aquifer, often emplace fluids that greatly exceed primary drinking water standards for gross alpha radiation (in 10–20 percent of these wells). However, this is an example of a practice which is so localized that EPA believes that a more effective approach than Federal regulations is to work with and support Florida's efforts to address these wells, and to take appropriate Federal enforcement actions where necessary.

Another type of beneficial use well that could have a high potential to contaminate USDWs if not properly controlled is subsurface environmental remediation wells. These wells are designed to improve an aquifer's quality by extracting and treating contaminated ground water and then injecting the treated effluent. While the treated injectate should be of higher quality than the receiving aquifer, the injection must be controlled closely to make sure that high concentrations of contaminants are not released and that it does not exacerbate the ground water contamination that is being cleaned up. These remediation wells operate as part of facility specific clean-up plans, which are approved and overseen by federal and State officials. EPA believes, therefore, that additional federal regulations under the UIC program are not needed to control potential problems associated with these wells because such regulations would simply duplicate existing controls. EPA believes that remediation actions are already adequately controlled as part of RCRA, CERCLA, or State remediation programs.

2. Fluid Return Wells

''Fluid return'' wells are used to inject spent fluids associated with the production of geothermal energy for space heating or electric power, the operation of a heat pump, the extraction of minerals, or aquaculture. The 1987 Report to Congress on Class V wells ranked the contamination potential of fluid return wells as moderate to low.

Both direct heat return wells and electric power wells were assessed by the Report to Congress as having a moderate contamination potential (Report to Congress, p. 4–106). Reasons given for this ranking include the fact that injected geothermal fluids typically have at least one constituent exceeding water quality standards (e.g., arsenic, chromium, and mercury), and injection occurs in great enough volumes to potentially affect ground water quality. The excessive temperatures of the injected fluids also may pose a concern. However, these wells are believed to pose an overall moderate contamination potential because typical well construction, operation, and maintenance is not expected to allow fluid injection into unintended ground water zones. The wells are typically constructed so that the injection zone is a geothermal reservoir, below all USDWs.

The vast majority of the geothermal fluid return wells are located in California and Nevada. Both States already require permits for the drilling and operation of these wells. In California, the Division of Oil and Gas and Geothermal Energy Resources oversees this permitting, and among other conditions, requires monthly reports on injection volumes and rates. In Nevada, geothermal wells are regulated by the Division of Environmental Protection, and existing permit requirements cover construction, operation, and closure of these wells.

Overall, the Agency believes that the State permit programs currently in place are sufficiently stringent to protect USDWs from contamination from geothermal fluid return wells, and are sufficient to prevent exceedences of the National Primary Drinking Water Standards. Furthermore, EPA believes that because many of these well types are concentrated in just a few western States, creating a rigorous national regulatory system would provide little additional benefits. If any wells pose specific problems that are not being adequately addressed by the States, EPA can use the prohibition of fluid movement standard in 40 CFR 144.12 or can require them to be permitted under 40 CFR 144.25 to prevent the endangerment of USDWs.

According to the Report to Congress, heat pump/air conditioning return flow wells pose a low potential to contaminate USDWs, even though they typically inject into or above USDWs (Report to Congress, p. 4–117). Because these wells generally dispose of return supply water, which has only been thermally altered, injectates are usually the same quality as fluids within any USDW in connection with the injection zone. Because of the lack of associated serious threats and the fact that 16 States already have established permit programs for these wells, EPA believes additional federal standards are unnecessary at this time. If EPA finds a particular well is endangering USDWs, existing authorities under 40 CFR 144.12 or 144.25 will be used to remedy the problem.

The Report to Congress concluded that wells used to inject spent brine after the extraction of minerals (halogens or salts) have a low potential to contaminate USDWs (Report to Congress, p. 4–236) and are found in only seven States. Typically, these wells are adequately constructed with multiple layers of protection which isolate the injected fluids from overlying USDWs and inject into deep confined formations. Therefore, even though the concentrations of some contaminants in the injectate may exceed drinking water standards, there is little potential for the contaminants to migrate into USDWs.

Based on these factors, EPA believes that additional federal UIC regulations for these wells are unnecessary because these wells are most appropriately managed through existing State and local authorities who are best equipped to tailor individualized design and operational requirements to the hydrogeologic conditions found in each of these seven States in order to protect USDWs.

Aquaculture return flow wells, which are used for disposal of liquid and semi-solid wastes associated with aquaculture, have a moderate potential to contaminate USDWs according to the Report to Congress (Report to Congress, p. 4–136). All injection from these wells occurs adjacent to the ocean. Operational monitoring of these wells is minimal. However, it is known that the injectate typically contains nitrates, nitrites, ammonia, BOD, and orthophosphate, often in concentrations exceeding drinking water standards. Injectate volumes are also extremely large (exceeding 10,000 acre-feet). Therefore, aquaculture return flow wells have the potential to influence ground water quality in the vicinity of the point of injection. The potential for serious degradation of ground water quality is mitigated, however, because the basal ground water flow in coastal Hawaii is usually seaward and the flow of contaminants will likely be away from fresher water inland (i.e., suitable drinking water). In addition, all aquaculture return flow wells are presently regulated under a permit program administered by the Hawaii Department of Health that is adequate to prevent the endangerment of USDWs. For these reasons, EPA believes that additional federal UIC regulation for this type of Class V well is unnecessary at this time.

3. Sewage Treatment Effluent Wells

Data in the Report to Congress suggest that sewage treatment effluent wells have a moderate potential (ranging from high to low) to contaminate USDWs

(Report to Congress, p. 4–185). Some sewage treatment effluent wells are used to inject clarified effluent that has undergone secondary or tertiary treatment. For example, a few shallow wells in Florida and Hawaii inject effluent that has undergone tertiary treatment, and there are 10 wells at a U.S. Forest Service ski lodge on Mount Hood, Oregon, that inject effluent that has undergone secondary treatment. The Agency believes the risk of these injection practices is low because the injectate is of high quality.

In some States, sewage treatment effluent that has undergone only primary treatment creates a higher potential to contaminate USDWs. Because the majority of these sewage treatment effluent wells of concern are being addressed at the State level (Florida and Hawaii have 80 percent of them), EPA does not believe that additional federal UIC regulations are warranted at this time. Any problems with these wells in Florida and Hawaii do not stem from inadequate regulations, but rather can be overcome through effective enforcement and more active implementation of existing regulations and authorities as is presently ongoing in Hawaii.

As a result, the Agency proposes to control any wells not being adequately addressed by specific State programs through the application of the no fluid movement standard in 40 CFR 144.12 and, if necessary, calling individual wells in for a permit under 40 CFR 144.25.

4. Cesspools

Cesspools are Class V wells which receive untreated sanitary waste and allow the waste to percolate directly into the subsurface. EPA believes cesspools have a high potential to contaminate USDWs. According to the Report to Congress, sanitary waste released in cesspools frequently exceeds the MCLs for nitrates, total suspended solids, and coliform bacteria (Report to Congress, p. 4–151). Other constituents of concern can include phosphates, chlorides, grease, viruses, and chemicals used to clean cesspools such as trichloroethane and methylene chloride. Numerous States, including Arizona, California, Hawaii, Illinois, Indiana, New York, Ohio, and Oregon, have reported degradation of USDWs from such cesspools. As opposed to properly managed septic systems, cesspools provide no treatment except for some settling of the solids.

Based on these concerns, new cesspools are currently banned in all States, with the exception of Hawaii, and therefore there is no need for a federal ban. Where State bans presently exist, States are phasing out existing cesspools over a time period negotiated by State and local governments and acceptable to EPA. However, since cesspools are very likely to be in violation of the non-endangerment requirements of § 144.12, EPA will continue to use its enforcement authorities to supplement State bans in direct implementation States.

5. Septic Systems

Under the UIC program, EPA regulates septic systems which have the ′capacity to serve 20 people or more but does not regulate smaller, single family systems. EPA believes that when properly spaced, sited, designed, constructed, and maintained all septic systems, regardless of their capacity, should not endanger USDW. However, the Report to Congress deemed septic systems as ‘‘high risk’’. There are two important reasons why the Report to Congress seems to disagree with the Agency’s view on the risks posed by septic systems. First, the Report to Congress considered not only septic systems which receive solely sanitary waste, but also systems which receive industrial and commercial wastes in addition to, or instead of, sanitary waste. EPA does not consider septic systems which receive industrial or commercial waste to be properly classified as ‘‘septic systems’’. Rather, EPA proposes to classify these high risk wells as ‘‘industrial waste discharge wells’’ and will manage such wells as discussed in the appropriate section below.

Second, the conclusions in the Report to Congress regarding the risks posed by septic systems were based, in part, on single-family septic systems because local records frequently were not sufficiently detailed to distinguish single-family systems from larger units. EPA is aware that improperly spaced and sited single-family septic systems can endanger USDWs, however, such systems are not included under the purview of the UIC program.[2] Once these single-family systems, and misused systems used for the disposal of industrial or commercial waste (which are defined as ‘‘industrial waste discharge wells’’ under today’s proposal), are excluded from the definition of ‘‘septic system(s)’’, EPA does not believe that the remaining systems pose a significant national problem.

Therefore, EPA does not believe that additional federal UIC regulations are necessary to control the threat posed by septic systems. All 50 States allow septic systems and recognize septic systems as a critical element of sanitary waste disposal. Most States already have standards governing the siting, spacing, construction and operation of septic systems. These standards have generally been tailored to reflect local hydrogeologic conditions. In addition, as discussed in the Report to Congress, the major cause of ground water contamination from septic systems is improper spacing; that is, the construction of too many systems too close together. This problem often occurs in areas of rapid growth and development, where public sewers do not exist. In these instances, EPA believes that land-use planning measures, which are available principally at the local level, are the only efficient approach to protecting the environment.

The Agency did consider the option of proposing specific conditions of authorization by rule for large capacity septic systems. However, to effectively protect USDWs from the risks posed by septic systems, proper siting and design standards must be tailored to local hydrogeologic conditions. EPA believes that the States and local authorities are in the best position to tailor these standards. Therefore, in order to avoid interfering with existing State and local programs, conditions of rule authorization for septic systems at the national level would have to be so general that they may not result in any added protection to USDWs while creating an additional administrative burden on States. For these reasons, EPA is not proposing additional regulations for septic systems and will instead rely on its Class V Management Strategy to minimize the threat posed by these wells.

6. Experimental Technology Wells

The Report to Congress ranked the USDW contamination potential of experimental technology wells as moderate to low (Report to Congress, p. 4–355). The Report identified 225 experimental technology wells in 17 States, over half of which were inactive underground coal gasification, in-situ oil shale retorting, and improperly classified in-situ uranium solution mining wells in Wyoming. At present, EPA is unaware of any operating experimental technology wells and cannot realistically determine what construction and operational processes might be involved in future subsurface experiments.

Therefore, EPA has decided not to propose additional stringent

[2] See 40 CFR 144.2(g)(2)(ii) and House of Representatives Report No. 93–1185.

requirements for Class V experimental technology wells. EPA believes that continuing to rule authorize experimental technology wells will provide adequate protection of USDWs. Under the current 40 CFR 144.26(e)(3), the owner or operator of any new experimental technology well, in States with EPA administered programs, must submit detailed inventory information prior to starting injection. This submittal would alert the EPA UIC program about the proposed injection activities and give the Director the opportunity to request additional information under 40 CFR 144.27 and/or require a permit under 40 CFR 144.25 if necessary to protect USDWs.

7. Drainage Wells

Drainage wells consist of a variety of wells used to drain surface and subsurface fluids. According to the 1987 Report to Congress, these wells range from low to high in contamination potential, depending on the particular type of drainage and well.

The most common types of drainage wells include agricultural drainage wells that receive irrigation tailwaters or stormwater; certain stormwater runoff wells that do not receive uncontrolled, contaminated runoff (i.e., chemical spills or stormwater runoff that has not been adequately segregated from chemical spills); ''special'' drainage wells; and improved sinkholes.

Data collected for the Report to Congress indicate that agricultural drainage wells have a high potential to contaminate USDWs because they may inject high concentrations of several contaminants, including sediment, nutrients, ions (including chloride and sulfate), pesticides and other organic compounds, metals (including arsenic, chromium, lead, copper, selenium, and mercury), and pathogens (Report to Congress, p. 4–27).

Although the Agency acknowledges these potential problems associated with agricultural drainage wells, EPA does not believe that additional Federal UIC regulations are necessary or appropriate for these wells. As with septic systems, EPA believes that additional Federal UIC regulations for agricultural drainage wells would be unlikely to prove effective in providing additional protection for USDWs. Agricultural drainage wells are a very small part of the overall impact of farming on ground water. Most ground water contamination problems attributed to these wells are more often the result of common agricultural practices such as fertilizer and pesticide application and land use practices, which are outside the scope of the UIC program. Therefore, the Agency believes that these wells are most appropriately managed at the State and local level where the overall risks associated with general agriculture practices can be addressed in a holistic fashion.

Therefore, under today's proposal, the Agency would continue to rule authorize agricultural drainage wells, while seeking to resolve the issues associated with nitrate and pesticide contamination in a broader manner. While agricultural drainage wells are numerous, they appear to be concentrated in Florida, Idaho, and Iowa. Problems in these localized areas can be addressed by specific State and local programs, such as the CSGWPPs and the Pesticide State Management Plans. EPA also has convened a panel of experts to evaluate and develop BMP guidelines to help ensure that agricultural drainage wells do not endanger USDWs.[3] As envisioned by EPA and other members of this panel (including the U.S. Department of Agriculture, State agencies, and universities), EPA can best achieve the goal of protecting USDWs from contamination associated with agricultural drainage wells by informing State agencies as to the available BMPs and then allowing regional governmental or regulatory entities to select the techniques best suited to local conditions. In the meantime, EPA would work with existing State and local programs to provide compliance assistance to the owners and operators of these wells. If necessary to protect USDWs, EPA could supplement these efforts by enforcing 40 CFR 144.12 and requiring owners or operators of individual wells to submit information and, if necessary, obtain permits under 40 CFR 144.25.

EPA believes that not proposing additional federal UIC regulations for agricultural drainage wells is further supported by the ongoing development and implementation of other programs designed to address agricultural contamination problems. For example, agriculture-related activities to reduce pollution receive the bulk of EPA's grant funding in the Nonpoint Source program. State funded activities to reduce agricultural contamination (e.g., nitrates) of water resources include support for technical assistance, educational programs, enforcement mechanisms, and assistance for BMP demonstration projects. Similarly, region-specific programs, such as the Chesapeake Bay Program, may reduce the need for UIC regulation of agricultural drainage wells. In 1992 alone, the Chesapeake Bay Program spent 54.2 million dollars on the installation of agricultural BMPs to reduce agricultural runoff contaminating the Bay. This funding has provided for planning, designing, and installing nutrient and erosion controls, as well as integrated pest management projects intended to reduce the quantities of pesticides applied to crop lands. These efforts help reduce the amount of fertilizers, manure, and pesticides potentially migrating through agricultural drainage wells into USDWs (Managing Nonpoint Source Pollution, USEPA Office of Water, EPA–506/9–90, January 1992). Section VII of this preamble provides further discussion of the relationship between today's proposal and other EPA programs.

Stormwater drainage wells were ranked by the Report to Congress as having a moderate potential to contaminate USDWs (Report to Congress, p. 4–41). This assessment considered the fact that urban storm water runoff can acquire contaminant loads from streets, roofs, landscaped areas, industrial areas and construction sites consisting of herbicides, pesticides, fertilizers, deicing salts, gasoline, grease, oil, tar and paving residues, rubber particulates, and many other constituents. In the Nationwide Urban Runoff Program (NURP), heavy metals were found to be the most prevalent priority pollutants in urban runoff. Most constituents released into stormwater drainage wells, however, usually are not present in concentrations that exceed drinking water standards, according to the Report to Congress. Moreover, contamination studies to date have not shown that area-wide degradation of ground water quality has resulted from these drainage wells.

EPA believes that the most significant threats posed by storm water drainage wells occur when the wells are located near loading docks, storage, and process areas where chemical spills may occur. EPA maintains that if storm water drainage wells are separated from these areas by a physical barrier (e.g., berm, dike, ditch, etc.), then these wells do not appear to pose a high potential to contaminate USDWs and do not warrant additional UIC regulation. If however, no physical barriers are in place that can adequately contain a spill, EPA proposes to classify such wells as Class V industrial waste discharge wells, and subject them to the same management approach as other industrial wells discussed below.

[3] See ''Expert Panel on Water Quality Impacts of Agricultural Drainage Practices, September 24–25, 1991 Meeting Summary,'' Underground Injection Control Branch, U.S. Environmental Protection Agency, September 28, 1992.

A variety of flow diversion structures and/or spill containment measures can be used to adequately segregate process areas, loading docks, and storage tank areas from stormwater drainage wells. Flow diversion structures divert stormwater flow away from or around drainage wells and/or potential spill areas. These can include gutters, sewers, channels, diversion dikes, or other structures. Effective diversion structures are typically constructed with a positive grade, although the grades are not so steep as to cause erosion from water movement. The conveyance is sized to handle the amount of water it will receive and is routinely inspected and cleared of debris.

Spill containment structures include dikes, curbs, catch basins, and other structures capable of containing spills, leaks, or other releases. Effective containment structures are sized to handle both rainfall and possible releases and spills, and are regularly inspected and maintained to insure the integrity of the system. Further information about these and other systems that are believed to provide adequate segregation from process areas, loading docks, and storage tank areas, for the purpose of qualifying as a stormwater drainage well under today's proposal, may be obtained in Storm Water Management for Industrial Activities; Developing Pollution Prevention Plans and Best Management Practices (EPA 832–R–92–006; September 1992).

Special drainage wells, which include swimming pool water drainage wells and landslide control drainage wells, were characterized as having a moderate to low contamination potential in the Report to Congress (Report to Congress, p. 4–68). All except one of the 1,385 swimming pool drainage wells inventoried by EPA for the Report are located in Florida, although the Agency is aware that such wells also exist in other States. Swimming pool drainage fluid may include calcium hypochlorite, chlorine, bromine, iodine, fungicides, and other contaminants. Some of the free chlorine in the fluid may degrade into trichloromethane. Although the drainage fluid sometimes has concentrations of constituents in excess of the MCLs, the injectate may be of equal or better quality than the fluids within any USDW in connection with the injection zone. Moreover, according to the Report to Congress, injection from these wells is unlikely to migrate into unintended zones (considering typical well construction, operation, and maintenance) or degrade the quality of receiving aquifers. Accordingly, EPA believes that enforcement of 40 CFR 144.12, requirements to submit information, and requirements to obtain a permit in certain situations when found to be necessary, under 40 CFR 144.25, would be a more appropriate regulatory approach than stringent permit requirements under the federal UIC program. Moreover, the Florida Department of Environmental Regulation already requires permits for the construction, plugging, and abandonment of swimming pool drainage wells and implements substantive requirements to protect USDWs.

All of the landslide control drainage wells inventoried by the Agency for the Report to Congress are located in Montana. These wells inject ground water from the shallow subsurface to deeper zones and are likely to have a low contamination potential due to their use of water from relatively uncontaminated shallow aquifers (Report to Congress, p. 4–68). The primary threat from these wells would arise from accidental releases of chemicals at the surface that could immediately transfer a large amount of contaminants to an aquifer. However, because these wells are already permitted by the State of Montana, and the probability of a chemical spill in the immediate vicinity of landslide control well appears small, EPA believes that additional federal regulation is not warranted.

A final type of drainage well includes improved sinkholes, or natural surface depressions that have been altered in order to direct fluids into the hole opening. These wells are constructed in karst topographic areas and are used to dispose of stormwater runoff in low areas along highways. Based on the analysis in the Report to Congress, improved sinkholes pose a high to moderate potential to contaminate USDWs (Report to Congress, p. 4–53). Major factors that contributed to this ranking included: (1) These wells typically inject into or above USDWs, (2) injectates often have constituent concentrations exceeding drinking water standards, and (3) runoff fluids, which may include lead, petroleum products, pesticides, fertilizers, wastes from wild and domestic animals and birds, are injected through and into channeled and fractured limestone or dolomite, limiting filtration or other attenuative processes.

To address these risks, EPA will classify improved sinkholes on the basis of how they are used as opposed to how they are designed. For example, when used to inject raw sewage these wells would be cesspools, and thus should be banned by current State regulation. EPA will be working with State UIC authorities to make sure that such uses of Class V wells are, in fact, prohibited. Similarly, use of these wells to inject industrial waste or stormwater runoff from process areas, loading docks, or storage areas would cause them to be classified as industrial wells. Therefore, today's proposal would in effect limit the classification of improved sinkholes as drainage wells to those used for stormwater emplacement (other than from process areas, loading docks, or storage areas), and the potential for these wells to contaminate USDWs would be similar to that of other stormwater drainage wells. On this basis, the Agency is proposing to continue to rule authorize these wells and continue to utilize existing regulatory authority (e.g., 40 CFR 144.12, 144.25, etc.) to protect USDWs.

8. Mine Backfill Wells

Mine backfill wells are used to place hydraulic (water) or pneumatic (air) slurries of sand, gravel, cement, mill tailings/refuse, or fly ash into underground mines. Mine backfill wells serve a variety of purposes ranging from subsidence prevention to control of underground fires. Data collected for the Report to Congress indicate that, in general, mine backfill wells have a moderate potential to contaminate USDWs (Report to Congress, p. 4–199). This assessment considered the fact that injectates consist of slurries that have the potential to react with acid mine water to mobilize potential ground water contaminants. Mill tailings and fly ash in the slurries also may cause detrimental interactions. Although the injectate may contain some contaminants, aquifers interconnected with these wells are generally of moderate to poor quality already, and the introduction of the injectate may not be considered degradation. Short-term use wells (mine fire control), in particular, pose little threat to USDWs. Moreover, most mine backfill/mine fire control wells are currently regulated under State water quality or mining programs.

An independent assessment of Class V well injection of coal mining waste into underground mines in West Virginia[4] provides additional evidence that mine backfill wells do not pose a threat to ground water. Prior to the start of this research in 1985, the West

[4] ''An Assessment of Class V Well Injection of Coal Mining Waste into Underground Mines in West Virginia,'' prepared by Diane M. Smith, Keystone Environmental Resources, Inc. (Monroeville, PA) and Henry W. Rauch, West Virginia University, Department of Geology and Geography (Morgantown, WV).

Virginia Department of Natural Resources and EPA determined that the injection of coal slurry and mine drainage precipitate sludge into underground coal mines was the most common Class V well injection activity in the State. Slurry or sludge injection to underground mines was found to be practiced by 46 companies having 65 injection projects at 60 mines across the State. Overall, slurry injection to underground coal mines was found usually to improve the quality of water that accumulates in the mines, commonly increasing pH and alkalinity levels as well as causing minor changes in trace element concentrations. Slurry injection, however, did result in increased sulfate levels in mine water. Sludge injection to underground mines was found to affect mine water quality in variable ways. In general, sludge injection appeared to improve water quality in highly alkaline mine waters but cause some degradation in acidic mine waters.

Based on this information, additional federal regulation of these wells under the UIC program does not appear warranted to protect USDWs. The Agency recognizes that some mine backfill wells may adversely affect ground water quality, especially when slurries or sludges are injected into mines that accumulate acid mine water. However, the generally poor quality of ground water that naturally exists in and around mines and the controls that are already in place under State water or mining programs indicate that mine backfill wells can generally continue to be rule authorized under the federal UIC program without endangering USDWs. EPA will continue to control these wells by enforcing 40 CFR 144.12, requiring owners or operators of particularly troublesome wells to obtain a permit pursuant to 40 CFR 144.25, and, in EPA administered programs, requiring the submittal of information under 40 CFR 144.27 on a case-by-case basis as needed to protect USDWs.

9. In Situ and Solution Mining Wells

In situ fossil fuel recovery wells are used to inject water, air, oxygen, solvents, combustibles, or explosives into underground coal or oil shale beds with the purpose of liberating fossil fuels. According to the Report to Congress, these wells pose a moderate potential to contaminate USDWs (Report to Congress, p. 4–229). The main concern for this well type is the potential impact of explosives and combustion products on ground water quality, which may include polynuclear aromatics, cyanides, nitrites, and phenols. No additional UIC regulations for these wells are needed at this time, however, because there currently are no such wells known to be operating in the United States.

Owners or operators of solution mining wells use injection and recovery techniques to bring minerals from underground deposits to the surface. Based on the data in the Report to Congress, EPA believes that these wells have a low potential to contaminate USDWs (Report to Congress, p. 4–209). This assessment considers the fact that most solution mining wells inject below USDWs (though not below the lowermost USDW) with very little potential for migration of fluids into USDWs. Though injectates may be corrosive acids with pHs exceeding drinking water standards and injectate volumes tend to be large, losses of fluid from the workings should be minimal. Since the construction and operational aspects of solution mining are simple, the potential for a malfunction leading to migration is minimal. Moreover, most of these wells are located in semi-remote areas far away from population centers. Most solution mining occurs in the desert Southwest whose alluvial aquifers generally have low water quality and USDWs are sparse. New Mexico, Wyoming and Arizona, three States in which the majority of these wells are located, have already established permit programs for solution mining wells. For all of these reasons, EPA does not believe that additional federal regulation of these wells is necessary to protect USDWs.

10. Industrial Waste Discharge Wells

The most difficult decision for EPA concerning this proposal lay with the appropriate management strategy for the remaining Class V wells—the industrial waste discharge wells. These Class V wells, which are used to inject industrial and commercial wastes, present the greatest danger to USDWs.

In the process of developing this proposal, EPA carefully considered an option of proposing additional regulatory requirements for these wells. Specifically, EPA considered using a traditional approach of requiring owners and operators of Class V industrial waste discharge wells to apply for a permit or close the wells in accordance with closure requirements specified in the regulation. EPA, however, believes that its approach to managing Class V industrial waste discharge wells has to be different because of the special problems posed by these wells. This difference is characterized by three factors: The diversity in the types of fluids being injected, the large number of facilities to be regulated, and the nature of the regulated community.

The diversity in the types of fluids being injected makes it difficult to establish one set of national minimum requirements. On one hand, EPA knows of numerous cases where industrial wells have caused significant ground water contamination. One survey, by EPA, in 1991 identified 100 Class V injection well contamination cases. (Drinking Water Contamination by Shallow Injection Wells, U.S. EPA Office of Water, March 1991.) Remediation costs, for the 10 cases for which cost information was available, ranged from tens of thousands to millions of dollars per site. Class V wells have been partially or fully responsible for the contamination of public water supplies in every EPA Region in the country. In EPA Region 10 alone (The States of Idaho, Oregon, Washington and Alaska), at least eight Superfund sites can be either completely or partially attributed to the disposal of industrial or commercial wastes in Class V industrial wells. At one Superfund site in Idaho, over $10 million has been spent on remedial investigation and feasibility studies to clean up contamination associated with past injection practices. At another site in Vancouver, Washington, the disposal of dry cleaning solvents in a septic system resulted in the contamination of a municipal water supply well, forcing the city to switch the approximately 30,000 people serviced by this well to another source of drinking water.

On the other hand, the Agency recognizes that many industrial sources inject wastes that have low concentrations of contaminants and, therefore, are not likely to endanger USDWs. With proper maintenance and management practices, these industrial injection wells may be able to inject fluids without endangering USDWs.

For example, some carwashes dispose of the wash water into a septic tank or dry well. If no motor or undercarriage washing is being performed, in general, such fluids will have low concentrations of contaminants. Laundromat washwater disposed of into a septic system or dry well, where no on site dry cleaning is performed and where no solvents are used for laundering, usually should not differ significantly from household wastewater and should not endanger USDWs.

Equipment washdown water from such industries as poultry and meat processors, seafood processors, and pickling operations are, in general, similar in quality to the sanitary waste from restaurant kitchens, which the

Agency is proposing to define as sanitary waste that can be disposed of in septic systems. As long as the wells accept only equipment washdown water and not process wastes from food processing operations, EPA believes that, in most cases, the injectate would not likely endanger USDWs.

Second, the Agency believes that the sheer size of the regulated community and the lack of facility specific data makes it difficult to consider a traditional approach. In order to examine options for this proposal, the Agency attempted to characterize the segment of the industrial waste discharge well population with a significant potential (based on the characteristics, volume and type of injected fluids) to endanger USDWs (see background document entitled ''Class V Industrial Well Inventory Analysis''). EPA did not include in this analysis the industrial waste discharge wells which it believes are posing a lesser threat to USDWs such as:

(1) Wells used to inject fluids from car washes where no motor or undercarriage washing is performed;

(2) Wells used to inject wastewaters from laundromats where no dry cleaning is performed;

(3) Wells used by food processors for disposal of washdown water from poultry, meat and seafood processing, and pickling operations.

Based on its analysis, the Agency estimates that of the more than one million Class V wells, there are over 117,000 industrial waste disposal wells. These wells are used for the disposal of industrial and commercial wastewaters at automotive-related facilities, print shops, dry cleaners, electronic equipment manufacturers, and photo processing labs.

A third factor is the nature of the regulated community. A large proportion of industrial waste discharge wells are owned by small businesses. For example, 72 percent of all retail motor fuel outlets are owned by small businesses. In reaching today's proposed decision, EPA attempted to minimize the administrative burden on small business without compromising the protection of USDWs. EPA believes that the Class V wells are better managed by State and local officials because many are owned and operated as small local businesses such as ''mom and pop'' gasoline service stations and convenience stores, or corner dry cleaners. These small entrepreneurs could be significantly affected by any additional administrative burden, such as the obligation to apply for a permit. Also, because of the nature of the regulated community, the success of the Class V program for industrial waste discharge wells depends on a high level of voluntary compliance and an effective program implementation at a State or local level of government. Many Class V industrial waste discharge wells are, in fact, misused septic systems. Because local health departments are located in or near communities with these Class V wells, the Agency believes that control of these is best effected at the local level. Implementation of many aspects of the Class V strategy could be conducted by these local entities and results better measured by local officials.

Therefore, because of the large diversity and size of the industrial waste discharge well universe, and the unique nature of the regulated community, EPA believes that additional federal UIC regulations to protect USDWs are inappropriate. EPA believes that the risks posed by these wells are best addressed, using existing authorities, as described below.

III. EPA's Strategy for the Management of Class V Wells

Instead of proposing additional Class V regulations, EPA will work with the States to implement a comprehensive Class V management strategy. The goal of the strategy will be to speed up the closure of potentially endangering Class V wells using current authorities and to promote the use of best management practices to ensure that other Class V wells of concern do not endanger USDWs.

To achieve these goals, EPA will rely on the existing performance-based standard in § 144.12, its other regulatory authorities in subpart C of the UIC rules, and a carefully tailored combination of guidance, education, and outreach. EPA believes that this approach will be more effective than promulgating additional design-based Class V requirements.

Since the Class V rule was developed in the Fall of 1994, EPA has undertaken a number of steps to assure effective consultations with and the active involvement of States. EPA has also employed a number of other approaches to solicit input from States on the scope and appropriateness of the proposed rule. An overall Class V strategy was developed early in 1995, which outlined how the Class V rule, coupled with guidances on implementation and a variety of technical issues, would work to assure that high priority Class V wells are addressed properly and their potential threat to USDWs is reduced or eliminated. A draft of the Strategy for the *Comprehensive Management of Class V Wells* was presented to State UIC program directors at the semi-annual meeting of the Ground Water Protection Council held in Washington, DC, on March 13, 1995.

In a parallel fashion, EPA's efforts to develop a Class V Management Implementation Strategy Guidance to help States put in place comprehensive Class V programs was also used to advise states on the proposed rule. EPA held two consultations with State Class V managers on this guidance in which the particulars of the rule and the schedule for issuance were discussed. The first meeting was held in Memphis, Tennessee, June 20–21, 1995, and attended by 12 States and one Tribal government representative. The second meeting was held in Salt Lake City, Utah, July 11–12, 1995 and attended by 18 States. EPA's proposed approach was generally well received and its inherent flexibilities were viewed favorably by the States. The roster of attendees at these sessions, added to the list of State Class V program managers who could not attend, will serve as the primary target audience for EPA's distribution of this **Federal Register** notice.

A. Technical Assistance

1. Program Management Implementation Guidance

EPA plans to issue a Class V Management Implementation Strategy Guidance to help States and Regions put in place comprehensive Class V programs using current authorities. EPA is in the process of drafting this guidance with input from the States. As mentioned above, EPA has already held two meetings to consult with the States on the development of this guidance.

EPA's goal in this guidance is to help the States put in place programs that will result in:

—Closure of endangering Class V wells such as industrial waste disposal wells and cesspools, particularly in ground-water priority areas (wellhead protection areas, etc.).

—Adequate controls being imposed on other Class V wells with a high potential to contaminate USDWs, if improperly managed.

This guidance will focus on the following areas:

(1) The need to set priorities and focus the State UIC resources on the highest risk Class V wells. To this end, the guidance will offer ideas for prioritization schemes based on the types of fluids being injected and geographic targeting.

The Class V management guidance will specifically target the following types of Class V industrial wells for inspection and follow-up enforcement action:

(a) Disposal wells used by automotive related facilities such as:

—Gas stations
—Automobile repair shops
—Automobile parts supply companies
—Motor vehicle dealers

(b) Disposal wells used by ''light'' industrial facilities such as:

—Dry cleaners
—Photographic processors
—Electroplaters
—Metal fabricators
—Printers

(2) The need to work cooperatively with other States and local authorities to implement the program. The types of facilities regulated under the Class V program are also likely to come under the purview of other regulatory programs particularly at the local level (county sanitarians, fire marshals, zoning boards). The guidance will describe how States can reach out to and educate these entities to enlist their help in implementing the program.

(3) The need to develop partnerships with volunteer organizations and environmental groups to help with outreach to the regulated community.

2. Technical Guidances

To support the Implementation Guidance, EPA is also proposing to issue technical guidances, some directed at the regulated community and some directed at the States.

a. Industrial waste discharge well closure guidance. Since EPA believes that the foremost goal of the Class V management strategy is the closure of endangering Class V wells, EPA will issue a closure guidance. A draft of this guidance should be available for review in late 1995. The guidance will be directed to owners and operators of Class V industrial wells and will be modeled after the closure standards used in EPA's administrative consent order with some major petroleum marketers.

b. Septic system guidance. To support existing State ground water protection programs in their efforts to protect USDWs, EPA will issue a technical assistance guidance which will include recommendations on the installation, operation, and maintenance of large capacity septic systems, such as:

- Proper installation of leachfields or other appropriate fluid distribution systems in a variety of geographic settings.
- Guidelines for system use and maintenance to avoid design capacity exceedences and system failure.
- Inspection techniques for early detection of systems malfunction or failure.
- Hydrogeologic factors to consider in system location to ensure the protection of USDWs.

c. *Agricultural drainage well guidance.* The Agency will issue a technical assistance guidance to help owners/operators of agricultural drainage wells minimize the impact of their facilities on USDWs. The guidance could include such recommendations as:

- Pesticides or fertilizers should not be mixed or stored in the immediate vicinity of a drainage well in a manner that allows spills, runoff, or leachate to enter the well directly.
- To the extent possible, the timing and methods for applying fertilizers should be selected to provide nutrients at rates necessary to achieve realistic crop yields, prevent endangerment of USDWs, and avoid applications to frozen soil and during periods of leaching or runoff.
- To the extent possible, owners or operators should use integrated pest management strategies that apply pesticides only when an economic benefit to the producer will be achieved (i.e., applications based on economic thresholds), and apply pesticides efficiently and at times when runoff and leaching losses are unlikely.
- Agricultural drainage wells should be located away from unsuitable areas, such as locations with excessively drained or highly erodible soils, and areas overlaying fractured bedrock or solution cavities that drain directly into USDWs. Appropriate separation distances should be based on a variety of factors including soil type, hydrogeologic conditions, nutrient and pesticide types and application rates.
- Nutrient and pesticide application equipment should be properly calibrated and operated.

d. Storm water drainage well guidance. As a part of the strategy for the comprehensive management of Class V wells, the Agency will issue a technical assistance guidance on the effective methods of managing storm water injection wells to assure the protection of USDWs. The guidance will provide information about systems that are believed to provide adequate segregation from industrial process or storage areas as well as techniques for minimizing the environmental impacts of injected storm water.

B. Outreach and Education

EPA will work with States, Regions, local government, trade associations and other industry stakeholders to develop and implement a comprehensive communication, education, and outreach program designed to encourage closure of Class V wells which may endanger USDWs and proper management of other non-industrial wells. EPA's first concern is an outreach and education effort directed toward the owners and operators of Class V industrial waste discharge wells.

The materials will be designed to inform the general public and local government authorities as well as operators of Class V wells, about the potential environmental and public health threats posed by these wells. These materials will provide information to operators of Class V facilities about the risks associated with these wells, what can be done to minimize the environmental threats of shallow injection wells, the benefits of closing Class V wells that may endanger USDWs, and where to get appropriate technical assistance.

The outreach effort will be two pronged.

(1) The Agency will develop materials to help States work with local government officials and make them aware of the risks posed by Class V wells to the public water supplies on which their constituents depend. The goal of this effort is to enlist local government help in dealing with Class V wells through the use of local ordinances, zoning and other local solutions.

(2) The Agency will work with specific trade associations through this effort to inform operators of industrial waste discharge wells of the risks posed by these wells and the benefits of closing wells that may endanger USDWs. The Agency will also strive to ensure that facilities which close their Class V wells have the necessary information to manage their wastes in an environmentally safe manner. The Agency will use this effort to promote pollution prevention so that wastes generated by the facilities are cost effectively minimized. The Office of Ground Water and Drinking Water has already produced a set of best management practices targeting certain industrial facilities. These BMPs can be used as a starting point for this effort.

C. Compliance Assurance Initiative

Considering the size of the regulated community, EPA believes that voluntary compliance is essential to the success of its Class V strategy. In cooperation with States, EPA will develop a compliance initiative targeting high risk Class V wells. The initiative will seek voluntary compliance with section 144.12 and other applicable regulation through outreach, education, and technical assistance. EPA is in the process of developing a policy to create special

incentives for small businesses who take the initiative to identify and correct environmental violations by requesting compliance assistance from the Director.

IV. Proposed Minor Amendments to the UIC Regulations in 40 CFR Part 144

Although EPA does not believe that a need currently exists for major changes to its Class V rules, EPA believes that in order to implement its proposed Class V strategy effectively, some minor amendments to the current regulations are necessary. Most of these amendments are intended to clarify the regulatory terminology used for Class V wells and do not impose new requirements on owners or operators of Class V wells. EPA does not solicit, nor will EPA respond to comments related to any unamended language included in the proposed revised sections solely for the purpose of supplying context for the reader.

This section of the preamble describes the proposed amendments to part 144 and the rationale for these changes.

A. Proposed Amendments to Subpart A—General Provisions

1. Section 144.1(g)—Specific Inclusions and Exclusions

EPA believes that a particularly useful technical amendment to the regulations would be the clarification of the definition of septic systems and a better explanation of which systems are and are not included under the purview of the UIC program.

The current regulations are somewhat confusing on the issue of septic systems. For example, while the specific inclusions in § 144.1(g)(1)(iii) include septic tanks or cesspools used to dispose of fluids containing hazardous waste, the list of Class V wells in § 146.5(e)(9) refers to ''septic system wells'' used to dispose of effluent from septic tanks. This has led some operators and States to believe that if the effluent from the septic tank is disposed of through a leachfield the device is no longer a Class V well. Therefore, to clarify the issue, the term ''well'' in sections 144 and 146 would be clarified to specifically include subsurface fluid distribution systems.

The current regulation also make a distinction in the definition and the exclusion sections between septic systems used by single-family homes and non-residential septic systems that receive solely sanitary waste and have the capacity to serve fewer than 20 people. EPA now believes that there is no difference between a single-family residence septic system and a non-residential system serving only a small number of people, as long as the non-residential system receives only sanitary waste. Such a non-residential system could include, for example, crew quarters or guard stations located at industrial facilities.

In this proposal, EPA would define cesspools and septic systems as wells receiving solely sanitary waste to distinguish them from similarly configured devices receiving industrial waste waters which would be considered industrial waste disposal wells. The proposal would also provide a definition for sanitary waste. Because it makes sense to provide the same type of relief to small residential and non-residential users of cesspools and septic systems, and for the sake of simplification, EPA is proposing to *exclude* from regulation all cesspools and septic systems serving fewer than 20 people and to revise § 144.1 accordingly. However, *any* Class V well, including a well that is configured like a small capacity septic system or cesspool, which receives something other than solely sanitary waste, is not considered a septic system or cesspool and is therefore *not excluded* from UIC regulation.

Under today's proposal, EPA would continue to exclude septic systems and cesspools, with the capacity to serve fewer that 20 people, from UIC regulation. However, in developing this proposal, EPA considered replacing the existing septic system/cesspool exclusion in favor of an exclusion that would be based on septic tank size (e.g., tanks under 2000 gallons would not be subject to UIC regulations), flow rate (e.g. systems receiving less than 5,000 gallons/day would not be subject to the UIC regulations), or dwelling size. EPA is requesting comment on the merits of the proposed exclusion and any other alternative exclusion, including those considered but not proposed by EPA, that would appropriately define which septic systems and cesspools are subject to UIC regulation.

2. Section 144.3—Definitions

The proposed regulation would add new definitions for the terms ''cesspool,'' ''drywell,'' ''improved sinkhole,'' ''sanitary waste,'' ''septic system,'' and ''subsurface fluid distribution system.'' The rule also would revise the existing definitions for ''well,'' and ''well injection.''

The definition of ''cesspool'' and ''septic system'' would conform with the new Class V categories explained in section I.A. of the preamble.

An ''improved sinkhole'' would be defined as a type of injection well regulated under the UIC program. Today's proposed definition would codify EPA's interpretation that the intentional use of naturally occurring karst or limestone depressions, for the purpose of disposing waste waters, fits within the statutory definition of underground injection.

''Sanitary waste'' would be defined as both ''domestic sewage and household waste, including any material (e.g., wastewater from clothes-washing machines, toilets, showers, and dishwashers) derived from single and multiple residences, hotels and motels, restaurants, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.'' The definition of sanitary waste in today's proposal is an adaptation of the household waste exclusion established in the RCRA regulations (40 CFR 261.4(b)(1)).

The definition of ''well'' would be revised to clarify that a ''well'' includes improved sinkholes and subsurface fluid distribution systems.

The definition of ''well injection''' would be revised to eliminate a redundancy and simply state that well injection means the subsurface emplacement of fluids through a well.

3. Section 144.6—Classification of Wells

The proposed regulation would revise § 144.6(a) by adding a paragraph (3) to include in Class I radioactive waste disposal wells injecting below all USDWs. Such wells, in fact, are similar to Class I wells in terms of their design, the nature of the fluids that they inject, and their potential to endanger USDWs. In particular, like Class I wells, such radioactive waste injection wells inject below all USDWs and warrant the same level of control.

The Agency believes that all of these wells are located in Texas, which already regulates them as Class I wells. Existing Class V radioactive waste disposal wells, therefore, would not be subject to any additional regulatory requirements. However, the Agency believes that Class I requirements related to permitting, construction, operating, monitoring, reporting, mechanical integrity testing, area of review, and plugging and abandonment are needed to prevent any new radioactive waste disposal wells from endangering USDWs. The Agency, thus, proposes to reclassify wells that inject radioactive waste below the lowermost USDW as Class I wells and subject them to the full set of existing Class I requirements. This approach is administratively much simpler and more straightforward than keeping the wells in the Class V universe and

developing identical requirements under the Class V program.

Section 144.6 (e) would also be revised to include an expanded definition of Class V wells. EPA is proposing to maintain the general existing regulatory definition, i.e. that Class V wells are injection wells not included in Classes I, II, III, or IV. The proposed rule, however, would add significant detail to this definition by including a list of 10 specific categories of wells that are considered Class V wells.

B. Proposed Amendments to Subpart C—Authorization of Underground Injection by Rule

1. Section 144.23—Class IV Wells

A new § 144.23(c) would be added to clearly rule authorize Class IV wells used to inject treated water into the formation from which it came if such injection is approved by EPA or a State as part of a RCRA or CERCLA remediation program. Therefore, these wells would not need a UIC permit to operate. However, the Agency encourages effective communication between State and Federal RCRA, CERCLA, and UIC programs regarding the management of injection wells which are part of an approved ground water remediation project.

2. Section 144.24—Class V Wells

Section 144.24(a) would be amended by revising paragraph (a) to authorize all Class V wells by rule for the life of the well instead of until further requirements become applicable.

This section currently provides at § 144.24(b)(3) that authorization by rule terminates upon proper closure of the well. EPA is mindful of the desire of owners and operators to make sure that they are ''out of the system'' and are no longer subject to the requirements of authorization by rule. One option to accomplish this goal would be to provide the operator with the opportunity to submit a certification that the well has been closed in accordance with the closure guidance which EPA intends to publish along with the promulgation of this rule. This would provide EPA with assurances that the well was properly closed and would establish a date certain upon which authorization by rule would terminate. EPA is, however, concerned with the administrative burden this option might entail. Therefore, EPA is requesting comment on the feasibility and advisability of such an option. EPA would also like commentors to provide alternatives to this option.

3. Section 144.26—Inventory Requirements

Section 144.26(b)(1)(iii) would be revised to track the new categories of Class V wells and drop radioactive waste disposal wells from the list.

V. Proposed Minor Amendments to the UIC Regulations in 40 CFR Part 146

This section of the preamble describes the proposed amendments to part 146 and the rationale for these changes.

A. Proposed Amendments to Subpart A—General Provisions

1. Section 146.3—Definitions

To parallel the proposed amendments at § 144.3, the proposed regulation would add new definitions for the terms ''cesspool,'' ''drywell,'' ''improved sinkhole,'' ''sanitary waste,'' ''septic system,'' and ''subsurface fluid distribution system.'' The rule also would revise the existing definitions for ''well,'' and ''well injection.''

2. Section 146.5—Classification of Injection Wells

Section 146.5 would be amended to make it consistent with § 144.6.

3. Section 146.10—Plugging and Abandoning Class I, II, III, IV and V Wells

The current regulations provide that authorization by rule terminates upon proper closure of Class V wells but do not give any direction of what constitutes proper closure. This section proposes to amend the requirements for plugging and abandonment (i.e., closure) found in 40 CFR 146.10 for Class I, II, and III injection wells by adding a reference to the Class IV closure requirements at § 144.23(b) and reiterating the Class V abandonment requirements at § 144.12(a).

New § 146.10(c) would (1) require the owner or operator of any Class V well to close the well in a manner that prevents the movement of fluids containing any contaminant into USDWs if the presence of this contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 142 or may otherwise adversely affect the health of persons and (2) requires that all material removed from or adjacent to the well during closure (such as sludge, gravel, sand, and possibly soil) be managed in accordance with all applicable Federal, State, and local regulations and requirements (including RCRA requirements). The existing requirements for Classes I, II, and III would not be changed, although they would be renumbered to accommodate the addition of the proposed new Class V requirements. As a result, EPA is not accepting public comment on the requirements for Classes I through III as they appear in today's proposal.

VI. Solicitation of Comments

A. General Solicitation

EPA invites and encourages public participation in this rulemaking. The Agency welcomes any comments on the Strategy for the Management of Class V wells announced in this preamble and on the regulatory changes proposed herein. The Agency will review and evaluate each and every comment received. The Agency asks that comments address any perceived deficiencies in the record of this proposal and that suggested revisions or corrections be supported by appropriate data.

B. Specific Comment Solicitations

For the reasons discussed above, EPA believes its proposed Class V Strategy is the best approach for effectively implementing the requirement of the Safe Drinking Water Act to prevent underground injection from Class V wells which endangers USDWs. The Agency recognizes, however, that the proposed approach is not necessarily the only possible means of accomplishing that goal. Accordingly, we solicit comment on the advisability of adopting other approaches, including ones that might incorporate more and different regulatory requirements. Specifically, we invite comment on the advisability of including the following regulatory amendments:

1. A requirement for notification to EPA or the State before the closure of Class V industrial waste discharge wells or other specific categories of Class V wells.

2. A requirement for notification to EPA or the State before the construction of Class V industrial waste discharge wells or other specific categories of Class V wells.

3. A provision in the regulations expressly creating general permit authority for all or specific categories of Class V wells.

4. Provisions in the regulations expressly requiring owners and operators of Class V industrial waste discharge wells, or other specific categories of Class V wells, to apply for and comply with specific permitting conditions or to close in accordance with specific regulatory requirements.

VII. Regulatory Impact

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the right and obligation of recipients thereof: or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive order 12866, it has been determined that this rule is a ''significant regulatory action'' because it meets test (4) listed above. OMB has reviewed this proposal and agrees with this conclusion.

B. Paperwork Reduction Act

This rule places no additional information collection or record-keeping burden on respondents. Therefore, an information collection request has not been prepared and submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

C. Impact on Small Businesses

Under the Regulatory Flexibility Act, an agency is required to prepare an initial regulatory flexibility analysis whenever it is required to publish general notice of any rule, unless the head of the Agency certifies that the rule, if promulgated, will not have significant economic impact on a substantial number of small entities. These regulations require no additional reporting by owners or operators and impose no new substantive requirements or standards. The reclassification of radioactive waste disposal wells has no impact on any existing wells and these wells are typically owned and operated by large mining companies. Therefore, the Administrator certifies that this regulation will not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a written statement to accompany rules where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of such a rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly and uniquely affected by the rule.

EPA estimates that the costs to State, local, or tribal governments, or the private sector, from this proposed rule will be far less than $100 million. This proposed rule should have no impact on owners or operators of Class V wells because the proposed rule imposes no new mandatory requirements. EPA has determined that an unfunded mandates statement, therefore, is unnecessary. Moreover, the rule proposed today does not establish any regulatory requirements that might significantly or uniquely affect small governments.

E. Effect on States with Primacy

According to the regulations at 40 CFR 145.32 for non-substantial program revisions, primacy States must assert in a letter from the State's Director or his authorized representative to the Regional Administrator that the State has incorporated the revisions and regulatory language into its current program or that it already meets the requirements. The State must submit this document within 270 days of the effective date of the final rule. The Agency expects that, since the proposed amendments do not impose new mandatory requirements, all States will be able to satisfy the requirements of 40 CFR 145.32 in a letter to the Regional Administrator.

Primacy States are put on notice that program revisions may be necessary pursuant to 40 CFR 145.32 following final promulgation of these proposed amendments. EPA anticipates that such revisions will be non-substantial in nature and that, when submitted, EPA will review them accordingly. EPA is aware that jurisdiction over Class V wells is often split among several agencies in a State. Some States have expressed concern that EPA might require changes in State Agencies' scope of responsibility. This is not the case. EPA's interest in reviewing State submittals will be to ensure that all types of wells covered by the Federal program are subject to the non-endangerment standards of the Federal UIC program and to adequate enforcement authorities whether or not the State chooses to call them Class V wells and regardless of which entity in the State has jurisdiction over the wells.

List of Subjects in 40 CFR Parts 144 and 146

Environmental protection, Ground water pollution control, Shallow disposal wells.

Dated: August 15, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for part 144 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 144.1 is amended by revising paragraphs (g)(1) introductory text, (g)(1)(iii), (g)(1)(iv) and (g)(2)(ii), removing paragraph (g)(2)(iii), redesignating paragraphs (g)(2) (iv) and (v) as (g)(2) (iii) and (iv), and revising newly designated paragraph (g)(2)(iv) to read as follows:

§ 144.1 Purpose and scope of part 144.

* * * * *

(g) * * *

(1) *Specific inclusions.* The following wells are included among those types of injection activities which are covered by the UIC regulations. (This list is not intended to be exclusive but is for clarification only.)

* * * * *

(iii) Any septic system, cesspool, or other well, used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities to dispose of fluids containing hazardous waste.

(iv) Any septic system, cesspool, or other well, used solely for the subsurface emplacement of sanitary waste, having the capacity to serve twenty persons or more per day.

(2) * * *

(ii) Any septic system, cesspool, or other well used solely for the subsurface emplacement of sanitary waste, having

the capacity to serve fewer than 20 persons a day.

* * * * *

(iv) Any dug hole which is not used for the subsurface emplacement of fluids.

* * * * *

3. Section 144.3 is amended by adding new definitions in alphabetical order for ''cesspool,'' ''drywell,'' ''improved sinkhole,'' ''sanitary waste,'' ''septic system,''' and ''subsurface fluid distribution system,''' and by revising the definitions of ''well,''' and ''well injection''' to read as follows:

§ 144.3 Definitions.

* * * * *

Cesspool means a ''drywell'' that receives solely untreated sanitary waste, and which sometimes has an open bottom and/or perforated sides.

* * * * *

Drywell means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

* * * * *

Improved sinkhole means a naturally occurring karst depression which has been modified by man for the purpose of directing and emplacing fluids into the subsurface.

* * * * *

Sanitary waste means domestic sewage and household waste, including any material (e.g., wastewater from clothes-washing machines, toilets, showers, and dishwashers) derived from single and multiple residences, hotels and motels, restaurants, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

* * * * *

Septic system means a ''well'' that is used solely to emplace sanitary waste below the surface and is comprised of a septic tank and subsurface fluid distribution system.

* * * * *

Subsurface fluid distribution system means an assemblage of perforated pipes or drain tiles used to distribute fluids below the surface of the ground.

* * * * *

Well means: (1) A bored, drilled, or driven shaft; (2) A dug hole whose depth is greater than the largest surface dimension; (3) An improved sinkhole; or (4) A subsurface fluid distribution system.

Well injection means the subsurface emplacement of fluids through a well.

* * * * *

4. Section 144.6 is amended by adding a new paragraph (a)(3) and revising paragraph (e) to read as follows:

§ 144.6 Classification of wells.

(a) * * *

(3) Radioactive waste disposal wells which inject fluids below the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water.

* * * * *

(e) *Class V.* Injection wells not included in Class I, II, III, or IV. Class V includes, but is not limited to, the following well types:

(1) *Beneficial use wells.* Wells used for aquifer recharge, salt water intrusion barriers, subsidence control, aquifer storage and recovery, or subsurface environmental remediation;

(2) *Fluid return wells.* Wells used to inject:

(i) Spent brines after extraction of minerals;

(ii) Heat pump return fluids; and

(iii) Fluids that have undergone chemical alteration during the production of geothermal energy for heating, aquaculture, or production of electric power into the same formation from which the fluids have been withdrawn;

(3) *Sewage treatment effluent wells.* Wells used to inject effluent from publicly or privately owned treatment works, into formations that are not below the lowermost USDW;

(4) *Cesspools* as defined in § 144.3.

(5) *Septic systems* as defined in § 144.3.

(6) *Experimental technology wells.* Any injection well that is part of an unproven subsurface injection technology;

(7) *Drainage wells.* Wells used to drain surface and subsurface fluids into a subsurface formation, including agricultural drainage and storm water runoff, other than runoff from load dock, storage, and processing areas; Wells injecting runoff from loading dock, storage and processing areas are included under paragraph (e)(10) of this section.

(8) *Mine backfill wells.* Wells used to inject a slurry of water or air with sand, mill tailings or other solids into mined out portions of subsurface mines;

(9) *In-situ and solution mining wells.* Wells used to inject fluids for the purpose of producing minerals or fossil fuels, which are not Class II or III wells;

(10) *Industrial waste discharge wells.* Wells used to inject wastewaters generated by industrial, commercial, and service establishments which are not included in paragraphs (e)(1) through (e)(9) of this section.

5. Section 144.23 is amended adding a new paragraph (c) to read as follows:

§ 144.23 Class IV wells.

* * * * *

(c) Notwithstanding the requirements of paragraphs (a) and (b) of this section, injection wells used to inject contaminated ground water that has been treated and is being injected into the same formation from which it was drawn are authorized by rule for the life of the well if such subsurface emplacement of fluids is approved by EPA, or a State, pursuant to provisions for cleanup of releases under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601–9675, or pursuant to requirements and provisions under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k.

6. Section 144.24 is amended by revising paragraph (a) to read as follows:

§ 144.24 Class V wells.

(a) Class V wells are authorized by rule for the life of the well if the owner or operator uses the well for the subsurface emplacement of fluids after the date on which a UIC program authorized under the SDWA becomes effective for the first time, and inventories the well pursuant to the requirements of § 144.26.

* * * * *

7. Section 144.26 is amended by revising paragraphs (b)(1)(iii)(A) through (F) and by removing paragraph (b)(1)(iii)(G) to read as follows:

§ 144.26 Inventory requirements.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(A) Mine backfill wells;

(B) Fluid return wells;

(C) Experimental technology wells;

(D) Sewage treatment effluent wells;

(E) Industrial waste discharge wells; and

(F) Any other Class V wells at the discretion of the Regional Administrator.

* * * * *

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

8. The authority citation for part 146 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

* * * * *

9. Section 146.3 is amended by adding the following new definitions in

alphabetical order: ''cesspool,'' ''drywell,'' ''improved sinkhole,'' ''sanitary waste,'' ''septic system,'' and ''subsurface fluid distribution system,'' and by revising the definitions of ''well,'' and ''well injection'' to read as follows:

§ 146.3 Definitions.

* * * * *

Cesspool means a ''drywell'' that receives solely untreated sanitary waste, and which sometimes has an open bottom and/or perforated sides.

* * * * *

Drywell means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

* * * * *

Improved sinkhole means a naturally occurring karst depression which has been modified by man for the purpose of directing and emplacing fluids into the subsurface.

* * * * *

Sanitary waste means domestic sewage and household waste, including any material (e.g., wastewater from clothes-washing machines, toilets, showers, and dishwashers) derived from single and multiple residences, hotels and motels, restaurants, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

* * * * *

Septic system means a ''well'' that is used solely to emplace sanitary waste below the surface and is comprised of a septic tank and subsurface fluid distribution system.

* * * * *

Subsurface fluid distribution system means an assemblage of perforated pipes or drain tiles used to distribute fluids below the surface of the ground.

* * * * *

Well means: (1) A bored, drilled, or driven shaft;

(2) A dug hole whose depth is greater than the largest surface dimension;

(3) An improved sinkhole; or

(4) A subsurface fluid distribution system.

Well injection means the subsurface emplacement of fluids through a well.

* * * * *

10. Section 146.5 is amended by adding a new paragraph (a)(3) and revising paragraphs (e) to read as follows:

§ 146.5 Classification of injection wells.

* * * * *

(a) * * *

(3) Radioactive waste disposal wells which inject fluids below the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water.

* * * * *

(e) *Class V.* Injection wells not included in Class I, II, III, or IV. Class V includes, but is not limited to, the following well types:

(1) *Beneficial use wells.* Wells used for aquifer recharge, salt water intrusion barriers, subsidence control, aquifer storage and recovery, or subsurface environmental remediation;

(2) *Fluid return wells.* Wells used to inject: Spent brines after extraction of minerals; heat pump return fluids; and fluids that have undergone chemical alteration during the production of geothermal energy for heating, aquaculture, or production of electric power, into the same formation from which the fluids have been withdrawn;

(3) *Sewage treatment effluent wells.* Wells used to inject effluent from publicly or privately owned treatment works, into formations that are not below the lowermost USDW;

(4) *Cesspools* as defined in § 144.3.

(5) *Septic systems* as defined in § 144.3.

(6) *Experimental technology wells.* Any injection well that is part of an unproven subsurface injection technology;

(7) *Drainage wells.* Wells used to drain surface and subsurface fluids into a subsurface formation, including agricultural drainage and storm water runoff, other than runoff from loading dock, storage, and processing areas; Wells injecting runoff from loading dock, storage and processing areas are included under § 144.6(e)(10).

(8) *Mine backfill wells.* Wells used to inject a slurry of water or air with sand, mill tailings or other solids into mined out portions of subsurface mines;

(9) *In-situ and solution mining wells.* Wells used to inject fluids for the purpose of producing minerals or fossil fuels, which are not Class II or III wells;

(10) *Industrial waste discharge wells.* Wells used to inject wastewaters generated by industrial, commercial, and service establishments which are not included in paragraphs (e)(1) through (e)(9) of this section.

* * * * *

11. Section 146.10 is revised to read as follows:

§ 146.10 Plugging and abandoning Class I, II, III, IV, and V wells.

(a) *Requirements for Class I, II and III wells.* (1) Prior to abandoning Class I, II and III wells, the well shall be plugged with cement in a manner which will not allow the movement of fluids either into or between underground sources of drinking water. The Director may allow Class III wells to use other plugging materials if the Director is satisfied that such materials will prevent movement of fluids into or between underground sources of drinking water.

(2) Placement of the cement plugs shall be accomplished by one of the following:

(i) The Balance method;

(ii) The Dump Bailer method;

(iii) The Two-Plug method; or

(iv) An alternative method approved by the Director, which will reliably provide a comparable level of protection to underground sources of drinking water.

(3) The well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method prescribed by the Director, prior to the placement of the cement plug(s).

(4) The plugging and abandonment plan required in §§ 144.51(o) and 144.52(a)(6) shall, in the case of a Class III project which underlies or is in an aquifer which has been exempted under § 146.04, also demonstrate adequate protection of USDWs. The Director shall prescribe aquifer cleanup and monitoring where he deems it necessary and feasible to insure adequate protection of USDWs.

(b) *Requirements for Class IV wells.* In EPA administered programs, prior to abandoning a Class IV well, the owner or operator shall close the well in accordance with § 144.23(b).

(c) *Requirements for Class V wells.* (1) Prior to abandoning a Class V well, the owner or operator shall close the well in a manner that prevents the movement of fluid containing any contaminant into an underground source of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 142 or may otherwise adversely affect the health of persons.

(2) The owner or operator shall dispose of or otherwise manage any soil, gravel, sludge, liquids, or other materials removed from or adjacent to the well in accordance with all applicable Federal, State, and local regulations and requirements.

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August 28, 1995

Part V

Environmental Protection Agency

40 CFR Part 136

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Total Kjeldahl Nitrogen; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–5280–8]

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Total Kjeldahl Nitrogen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This amendment approves the use of three additional test procedures at Part 136 for the determination of Total Kjeldahl Nitrogen (TKN) in wastewater. Use of approved test procedures is required whenever the waste constituent specified is required to be measured for: an NPDES permit application; discharge monitoring reports; state certification; and other requests from the permitting authority for quantitative or qualitative effluent data. Use of approved test procedures is also required for the expression of pollutant amounts, characteristics, or properties in effluent limitations guidelines and standards of performance and pretreatment standards, unless otherwise specifically noted or defined.

DATES: This rule shall be effective on September 27, 1995.

In accordance with 40 CFR 23.2 (45 FR 26048), these amendments to the regulation shall be considered issued for purposes of judicial review at 1 p.m. eastern time, September 11, 1995.

The incorporation by reference of certain publications listed in the regulation is approved by the Office of the **Federal Register** as of September 27, 1995.

Under section 509(b)(1) of the Clean Water Act, judicial review of these amendments can be obtained only by filing a petition for review in the United States Court of Appeals within 120 days after they are considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, these amendments may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Longbottom, National Exposure Research Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268. Telephone number: (513) 569–7308.

SUPPLEMENTARY INFORMATION:

I. Authority

This regulation is issued under authority of sections 301, 304(h) and 501(a) of the Clean Water Act, 33 U.S.C. 1251 *et seq.* (the Federal Water Pollution Control Act Amendments of 1972 as amended) (the ''Act''). Section 301 of the Act forbids the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit, issued under section 402. Section 304(h) of the Act requires the Administrator of the EPA to ''promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit application pursuant to section 402 of this Act''. Section 501(a) of the Act authorizes the Administrator to ''prescribe such regulations as are necessary to carry out his functions under this Act''.

II. Regulatory Background

The CWA establishes two principal bases for effluent limitations. First, existing discharges are required to meet technology-based effluent limitations. New source discharges must meet new source performance standards based on the best demonstrated technology-based controls. Second, where necessary, additional requirements are imposed to assure attainment and maintenance of water quality standards established by the States under Section 303 of the CWA. In establishing or reviewing NPDES permit limits, EPA must ensure that permitted discharges will not cause or contribute to a violation of water quality standards, including designated water uses.

For use in permit applications, discharge monitoring reports, and state certification and to ensure compliance with effluent limitations, standards of performance, and pretreatment standards, EPA has promulgated regulations providing nationally-approved testing procedures at 40 CFR Part 136. Test procedures have previously been approved for 262 different parameters. Those procedures apply to the analysis of inorganic (metal, non-metal, mineral) and organic chemical, radiological, bacteriological, nutrient, demand, residue, and physical parameters.

Additionally, some particular industries may discharge pollutants for which test procedures have not been proposed and approved under 40 CFR Part 136. Under 40 CFR Part 122.41 permit writers may impose monitoring requirements and establish test methods for pollutants for which no approved Part 136 method exists. 40 CFR 122.41(j)(4). EPA may also approve additional test procedures when establishing industry-wide technology-based effluent limitations guidelines and standards as described at 40 CFR 401.13.

The procedures for approval of alternate test procedures (ATPs) are described at 40 CFR 136.4 and 136.5. Under these procedures the Administrator may approve alternate test procedures for nationwide use which are developed and proposed by any person. 40 CFR 136.4 (a). Under 136.4 (d), dischargers seeking to use such alternate procedures on a limited basis (e.g. for their own discharge) must apply to the State or Regional EPA office in which the discharge occurs. As specified below, today's rule approves optional nationwide alternate procedures for the determination of TKN in wastewater test samples.

III. The Total Kjeldahl Nitrogen (TKN) Test Procedures

The Perstorp Analytical Corporation, in accordance with the regulations published at 40 CFR 136.5, applied for nationwide approval of three alternate procedures for the determination of TKN in wastewater.

A. Scope of the Procedures

The applicable ranges for the titrimetric method (PAI–DK01) and colorimetric method (PAI–DK02) are 0.4 to 10 mg/L, when analyzing a 100 mL sample. The applicable range for the gas diffusion method (PAI–DK03) is 0.2 to 10 mg/L when analyzing a 200 µL sample. The method detection limit has been determined to be 0.15 mg/L for the titrimetric and the colorimetric methods and 0.02 mg/L for the gas diffusion method. These methods are not available for use to determine TKN concentrations greater than 10 mg/L unless one of the following two requirements are met:

a. Dilution of the TKN concentration of a sample to a level less than, or equal to 10 mg/L, before the initiation of the analysis, multiplication of the TKN concentration observed in the digested, diluted sample by the appropriate dilution factor, and demonstration of acceptable accuracy (percent recovery) as required in the Quality Control section of the method.

b. Demonstration of the applicability of a specific scope extension by demonstrating calibration range linearity, laboratory performance, and analyte percent recovery, particularly in fortified samples, as outlined in the Quality Control section.

B. Summary of the Methods

TKN is defined as the sum of free ammonia and organic nitrogen compounds which are converted to ammonium sulfate under the conditions described. The procedures convert nitrogen components of biological origin such as amino acids, proteins and peptides to ammonia but may not convert the nitrogenous compounds of some industrial wastes such as amines, nitro compounds, hydrazones, oximes, semicarbazones and some refractory tertiary amines.

For all three methods, the sample is heated in a block digester with concentrated sulfuric acid, potassium sulfate and copper sulfate and evaporated until the solution becomes colorless or pale yellow. The block-digested sample is cooled and diluted to volume. For the colorimetric and titrimetric methods the cooled, diluted solution is made alkaline with a hydroxide-thiosulfate solution and distilled in an automated distillation system. In the colorimetric method (Method PAI–DK01) the ammonia in the alkaline digestate is measured at 400–425 nm after reaction with Nessler reagent. In Method PAI–DK02, the ammonia is distilled into a boric acid receiving solution and is measured by automated or manual titration with 0.02 N H_2SO_4 to a bromocresol green methyl red indicator endpoint. In the FIA system (Method PAI–DK03), a 200-µL aliquot of the digested and diluted sample is injected into the flow injection manifold. The subsequent addition of NaOH releases the ammonia from the ammonium sulfate originally present in the digested sample. The released ammonia passes through a gas diffusion membrane into an indicator receiving solution which is monitored at 590 nm. The extent of indicator color change is proportional to the concentration of TKN present in the sample.

C. Technical Justification for Proposed Procedures

The approvals of these procedures are based on the data packages submitted by the applicant, Perstorp Analytical. EPA is approving the methods based on the method descriptions in EPA's Environmental Monitoring Management Council format, comparative analyses using the proposed and approved procedures, and EPA's technical and statistical reviews of each data package.

Perstorp Analytical provided test data comparing the three proposed procedures with an appropriate approved procedure. All three proposed methods were compared to the approved EPA Ion Selective Electrode Method 351.4; EPA statisticians and chemists conducted independent reviews of the data. The submitted recovery data for both the approved and proposed methods were also compared to the recovery acceptance criteria derived from results for block digester analyses (EPA Method 351.4) in EPA's Performance Evaluation Studies WP 18 through 23.

The Agency has judged the block digester electrode procedure (EPA Method 351.3), utilized as the reference approved method by the applicant to be applicable in the evaluation of the three proposed procedures. EPA's Aquatic Research Division of the National Exposure Research Laboratory (formerly the Environmental Monitoring Systems Laboratory) in Cincinnati, Ohio (NERL-Cincinnati), thoroughly reviewed and evaluated the supporting data submitted by Perstorp. The reviews indicated that the analyses afforded comparable recovery and precision in the recommended concentration ranges for TKN. EPA proposed approval of the TKN procedures and sought public comment on the suitability of these three methods as alternate procedures for use in the determination of TKN in 60 FR 26600 (May 17, 1995). The administrative record is on file at NERL-Cincinnati, 26 W. Martin Luther King Dr., Cincinnati, Ohio 45268. The record is available for public inspection. The approved procedures are available from Perstorp Analytical Company, 9445 SW Ridder Rd., Suite 310, P.O. Box 648, Wilsonville, OR 97070.

Based on EMSL-Cincinnati's review, and pursuant to 40 CFR Section 136.5, EPA is approving the Perstorp titrimetric, colorimetric, and FIA gas diffusion methods for TKN as acceptable alternative test procedures for nationwide use. Specifically, the methods exhibit sufficient precision and recovery to establish (1) their acceptability under Part 136 and (2) their comparability to other approved procedures for analysis of TKN. As approved alternate test procedures, these methods are acceptable for use by any person required to test for TKN.

IV. Public Comments

The Agency requested written comments on the proposal to approve the three methods for TKN, but no comments were received.

V. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866, EPA must judge whether a regulation is ''significant'' and, therefore, requires a regulatory impact analysis. EPA has determined that this regulation is not major as it will not result in an effect on the economy of $100 million or more, a significant increase in cost or prices, or any of the effects described in the Executive Order. This final rule would simply specify alternative analytical methods which may be used by laboratories in measuring concentrations of TKN and, therefore, will have no adverse economic impacts. The Office of Management and Budget (OMB) has waived Executive Order 12866 review of the proposal.

B. Regulatory Flexibility Act

This rule is consistent with the objectives of the Regulatory Flexibility Act (5 U.S.C. 602 et seq.) because it will not have a significant economic impact on a substantial number of small entities. The procedure included in this rule gives all laboratories the flexibility to use these alternate methods or not to use them.

C. Paperwork Reduction Act

This rule contains no requests for information activities and, therefore, no information collection request (ICR) was submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, (44 U.S.C. 3501 et seq.).

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a written statement to accompany rules where the estimated costs to State, local, or tribal governments, or to the private sector will be $100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of such a rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly and uniquely affected by the rule.

EPA estimates that the costs to State, local or tribal governments, or the private sector, from this rule will be far less than § 100 million. This rule should have minimal impact, if any, on the existing regulatory burden imposed on NPDES permittees required to monitor for regulated pollutants because the rule would merely make additional options available to the laboratory analyst conducting an existing approved test method. EPA has determined that an unfunded mandates statement therefore is unnecessary. Similarly, the method

approved today does not establish any regulatory requirements that might significantly or uniquely affect small governments.

List of Subjects in 40 CFR Part 136

Environmental protection, Incorporation by reference, Water pollution control.

Dated: August 14, 1995.

Carol M. Browner,

Administrator.

In consideration of the preceding, EPA amends part 136 of title 40 of the Code of Federal Regulations as follows:

PART 136—[AMENDED]

1. The authority citation for part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Public Law 95–217, Stat. 1566, *et seq.* (33 U.S.C. 1251 *et seq.*) (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. In 136.3(a), Table IB is amended by revising entry 31 and by adding footnotes 39 through 41 to read as follows:

§ 136.3 Identification of test procedures.

(a) * * *

TABLE 1B.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and method	EPA[1 35]	Standard methods 18th Ed.	ASTM	USGS[2]	Other
* * *		*	*	*	*
31. Kjeldahl Nitrogen—Total, (as N), mg/L:					
Digestion and distillation followed by:	351.3	4500–NH_3 B or C ..	D3590–89(A)	.....	
Titration	351.3	4500–NH_3 E	D3590–89(A)	.....	973.48[3].
Nesslerization	351.3	4500–NH_3 C	D3590–89(A)	.....	
Electrode	351.3	4500–NH_3 F or G ..	.....	.....	
Automated phenate colorimetric	351.1	.....	.....	I–4551–78[8]	
Semi-automated block digester colorimetric	351.2	.....	D3590–89(B)	.....	
Manual or block digester potentiometric	351.4	.....	D3590–89(A)	.....	
Block Digester, followed by:					
Auto distillation and Titration, or	.....	.....	.....	.....	Note 39.
Nesslerization	.....	.....	.....	.....	Note 40.
Flow injection gas diffusion	.....	.....	.....	.....	Note 41.
* * *		*	*	*	*

[1] "Methods for Chemical Analysis of Water and Wastes", U.S. Environmental Protection Agency, Aquatic Research Division, National Exposure Research Laboratory-Cincinnati, EPA–600/4–79–020, Revised March 1983 and 1979 where applicable.

[2] Fishman, M. J., et al, "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments," U.S. Department of the Interior, Techniques of Water—Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

* * * * *

[35] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic are provided in Appendix D of this part titled, "Precision and Recovery Statements for Methods for Measuring Metals".

* * * * *

[39] Nitrogen, Total Kjeldahl, Method PAI–DK01 (Block Digestion, Steam Distillation, Titrimetric Detection), revised 12/22/94, Perstop Analytical Corporation.

[40] Nitrogen, Total Kjeldahl, Method PAI–DK02 (Block Digestion, Steam Distillation, Colorimetric Detection), revised 12/22/94, Perstop Analytical Corporation.

[41] Nitrogen, Total Kjeldahl, Method PAI–DK03 (Block Digestion, Automated FIA Gas Diffusion), revised 12/22/94, Perstop Analytical Corporation.

* * * * *

3. In 136.3(b) the list entitled "References, Sources, Costs, and Table Citations" is amended by adding paragraphs (35)-(37) to read as follows:

§ 136.3 Identification of test procedures.

* * * * *

(b) * * *

References, Sources, Costs, and Table citations:

* * * * *

(35) "Nitrogen, Total Kjeldahl, Method PAI–DK01 (Block Digestion, Steam Distillation, Titrimetric Detection)", revised 12/22/94. Available from Perstorp Analytical Corporation, 9445 SW Ridder Rd., Suite 310, P.O. Box 648, Wilsonville, OK 97070. Table IB, Note 39.

(36) "Nitrogen, Total Kjeldahl, Method PAI–DK02 (Block Digestion, Steam Distillation, Colorimetric Detection)", revised 12/22/94. Available from Perstorp Analytical Corporation, 9445 SW Ridder Rd., Suite 310, P.O. Box 648, Wilsonville, OK 97070. Table IB, Note 40.

(37) "Nitrogen, Total Kjeldahl, Method PAI–DK03 (Block Digestion, Automated FIA Gas Diffusion)", revised 12/22/94. Available from Perstorp Analytical Corporation, 9445 SW Ridder Rd., Suite 310, P.O. Box 648, Wilsonville, OK 97070. Table IB, Note 41.

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federal register

Monday
August 28, 1995

Part VI

Office of Management and Budget

Standards for the Classification of Federal Data on Race and Ethnicity; Notice

OFFICE OF MANAGEMENT AND BUDGET

Standards for the Classification of Federal Data on Race and Ethnicity

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Information and Regulatory Affairs.

ACTION: Interim Notice of Review and Possible Revision of OMB's Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting: Summary and Analysis of Public Comments and Brief Discussion of Research Agenda.

SUMMARY: In 1977, OMB issued the Race and Ethnic Standards for Federal Statistics and Administrative Reporting that are set forth in Statistical Policy Directive No. 15. The standards in this Directive have been used for almost two decades throughout the Federal government for recordkeeping, collection, and presentation of data on race and Hispanic origin. The standards have been used in two decennial censuses and in surveys of the population, data collections necessary for meeting statutory requirements associated with civil rights monitoring and enforcement, and in other administrative program reporting.

During the past several years, the standards have come under increasing criticism from those who believe that the minimum categories set forth in Directive No. 15 do not reflect the increasing diversity of our Nation's population. Some have also proposed changing the names of some categories. In response to the criticisms, OMB initiated a review of the Directive. As a first step in this process, OMB asked the Committee on National Statistics (CNSTAT) of the National Academy of Sciences to organize a workshop to discuss issues to be addressed in the review. A report of the workshop, held in February 1994, is forthcoming from CNSTAT. During 1994, the review process also included (1) Public hearings in Boston, Denver, San Francisco, and Honolulu, (2) comment by Federal agencies on their requirements for racial and ethnic data, (3) development of a research agenda and related literature reviews, and (4) publication of a **Federal Register** notice, 59 FR 29831 (1994). The June 9, 1994, notice contained information on the development of the current standards and requested public comment on: (1) The adequacy of current racial and ethnic categories, (2) the principles that should govern any proposed revisions to the standards, and (3) specific suggestions for change that had been offered by individuals and interested groups over the past several years. (See Appendix for the text of Directive No. 15.)

This **Federal Register** notice (1) summarizes the suggestions for changes drawn from public comments, research findings, and literature reviews, (2) briefly discusses the research agenda for some of the significant issues that have been identified, and (3) sets forth proposed principles to be used in reaching a final decision on standards for the classification of data on race and ethnicity. The issues, suggestions for change, and pros and cons described in this notice are those raised in public comment and do not reflect OMB positions or decisions. In addition it should be noted that because the categories in Directive No. 15 have been useful for over 18 years for many purposes, an option under consideration is to make no changes.

Important dates in the balance of the review process are shown below. Various agencies are conducting activities to support the review process; these include work by the Bureau of the Census related to the 2000 Census program mentioned below.

Fall 1995—OMB analyzes **Federal Register** notice comments; receives results of May 1995 CPS Supplement; continues to consult on options with affected groups

March 1996—Census Bureau conducts National Content Test (NCT) in preparation for 2000 Census

June 1996—Census Bureau conducts Race and Ethnic Targeted Test (RAETT) in preparation for 2000 Census

November 1996 through January 1997—Bureau of the Census provides test results from National Content Test and Race and Ethnicity Targeted Test

Spring 1997—OMB publishes **Federal Register** notice on research results and proposed decisions on changes, if any, to Directive No. 15

Mid-1997—OMB publishes final decision regarding any changes to Directive No. 15 in a **Federal Register** notice

ISSUES FOR COMMENT: With this notice, OMB requests public comment on the following: (1) Are there any issues or options not listed that should be considered before a final decision is made? (2) for each option presented, are there additional pros and cons to consider? (3) are there additional principles that should govern a final decision on whether or how to revise the standards? and (4) which options should be included for testing in 1996? This **Federal Register** notice provides the last opportunity for public comment on priorities for research in 1996.

All comments received as a result of the June 9, 1994, notice have been reviewed and considered in preparing this notice. It is not necessary to resubmit comments sent previously.

ADDRESSES: Written comments on these issues may be addressed to Katherine K. Wallman, Chief, Statistical Policy, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10201, 725 17th Street, NW., Washington, DC 20503.

DATES: To ensure consideration, written comments must be provided to OMB on or before September 30, 1995.

ELECTRONIC AVAILABILITY AND COMMENTS: This document is also accessible on the U.S. Department of Commerce's FedWorld network under the ''OMB Library of Files.'' The Telnet address for FedWorld via the Internet is *fedworld.gov*. The address (URL) for the World Wide Web is *http://www.fedworld.gov/ftp.htm*#omb. For ftp access, *ftp://fwux.fedworld.gov/pub/omb/omb.htm*. The telephone number for the FedWorld help desk is (703) 487–4608. For assistance in using electronic mail, please contact your system administrator.

Comments may be sent to OMB using the following Internet address: *ombdir15(@)a1.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Suzann Evinger, Statistical Policy Office, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10201, 725 17th Street, NW., Washington, DC 20503. Telephone: 202–395–3093.

SUPPLEMENTARY INFORMATION:

A. Background

The United States government has long collected statistics on race and ethnicity. Such data have been used to study changes in the social, demographic, health, and economic characteristics of various groups in our population. Federal data collections, through censuses, surveys, and administrative records, have provided an historical record of the Nation's population diversity and its changing social attitudes and policy concerns.

Since the 1960s, data on race and ethnicity have been used extensively in civil rights monitoring and enforcement covering areas such as employment, voting rights, housing and mortgage lending, health care services, and educational opportunities. These legislatively-based priorities created the need among Federal agencies for

compatible, nonduplicative data for the specific population groups that historically had suffered discrimination and differential treatment on the basis of their race or ethnicity. In response, the Office of Management and Budget (OMB) issued in 1977 the ''Race and Ethnic Standards for Federal Statistics and Administrative Reporting'' contained in Statistical Policy Directive No. 15. These categories also implemented the requirements of Pub. L. 94–311 of June 16, 1976, which called for the collection, analysis, and publication of economic and social statistics on persons of Spanish origin or descent. Hence, the population groups identified by the Directive No. 15 racial and Hispanic origin categories reflected legislative and agency needs, and not efforts by population groups to be specifically identified.

In recent years, Directive No. 15 has been criticized for not sufficiently reflecting the Nation's diversity. In addition, some critics have proposed changing the names of some categories. In a June 9, 1994, **Federal Register** notice, OMB announced a review of Directive No. 15. As part of the review and public comment period, OMB held hearings in Boston, Denver, San Francisco, and Honolulu. The June 9, 1994, **Federal Register** notice contains additional background information on the development of Directive No. 15; revisions proposed but not made in 1988; congressional hearings before the House Subcommittee on Census, Statistics, and Postal Personnel in 1993; a workshop conducted by the Committee on National Statistics in 1994; work done by the Interagency Committee for the Review of the Racial and Ethnic Standards; and general principles for the review of the racial and ethnic categories.

In the June 9, 1994, **Federal Register** notice, OMB cited specific concerns the public had raised over the years regarding Directive No. 15. As a result of the notice, the public commented on the need for new categories, changes in current categories, whether racial and ethnic data should be collected, legislative and programmatic needs for the data, and the issue of self-identification versus observer identification. OMB received nearly 800 letters in response to the 1994 **Federal Register** notice and heard the testimony of 94 witnesses during the four public hearings. OMB heard from a wide array of interested parties including individuals, data users, and data providers from within and outside the Federal Government.

This **Federal Register** notice focuses primarily on the six major issues discussed in comments from the public (Section B); the expected future research agenda (Section C); and general principles for making a final decision on standard racial and ethnic categories for Directive No. 15 (Section D).

Historical continuity of racial and ethnic data is important to many data users. Over time, however, there have been variations in how the Nation's principal population groups have been classified according to race and ethnicity; such differences have occurred even within data sets. In decennial censuses, for example, a question on race has been included since 1790. There have been many changes in the broad racial categories, the specific components of the categories, and whether data on ethnicity were collected. Asian Indians, for example, were counted as ''Hindus'' in censuses from 1920 to 1940, as ''White'' from 1950 to 1970, and as ''Asians or Pacific Islanders'' in 1980 and 1990.

Numerous studies reveal that identification of ethnicity is fluid and self-perceptions of race and ethnicity change over time and across circumstances for many people. This is especially true among persons with heterogeneous ancestries. A study of the Current Population Survey showed 1 in 3 people reported an ethnicity in 1972 that was different from the one they had reported in 1971. This level of inconsistency reflects the fluidity of ethnicity as well as the effect of question design.

Major historical inconsistencies in the data reflect social reality and public policy as well as technical decisions by data developers. Most agree that comparability over time is a desirable goal but that it is important also to reflect changes in society as they occur. Thus, General Principles 9 and 10 (see section D below) call for conducting research before any changes are made and for providing a crosswalk between old and any new categories so comparisons can be made across time.

There are also differences among data sets with respect to how race and ethnicity are classified. On birth records, for example, the race of the baby's mother and father are based on reports of the mother or family members. The race of the baby, which is not reported on the birth record, was once assigned for purposes of published statistics by an algorithm based on the parents' races. Since 1989, however, the National Center for Health Statistics has tabulated birth data according to the mother's race. In censuses and surveys until 1970, racial data were usually based on the observation of the government enumerator filling out the questionnaire. Now, the usual practice is self-administered forms and questionnaires, especially when the purpose of data gathering is to obtain information on population characteristics. In the enforcement of civil rights laws, however, the classification is often made by employers or school administrators, and the observer's perception is at issue. Whether someone is a victim of discrimination often turns on the way in which others act on their perception of, for example, the color of the individual's skin, the ethnic origin of his or her last name, or the accent with which he or she speaks. Such issues do not depend generally on the way in which the individual identifies his or her racial or ethnic background. In sum, Federal data sets identifying race and ethnicity are a mixture of self-identification by respondents and the perceptions of observers.

Until the current racial and ethnic standards were adopted in 1977, Federal data collections used an assortment of definitions for broad racial categories. In response to that problem, a Federal interagency committee recommended development of common categories for racial and ethnic data. Directive No. 15 provides a minimum set of standard categories and definitions for presenting data on various racial and ethnic groups in our population. The Directive requires compilation of data for four racial categories (White, Black, American Indian or Alaskan Native, and Asian or Pacific Islander), and an ethnic category to indicate Hispanic origin, or not of Hispanic origin.

To date evaluation of the quality of racial and ethnic data has been limited to research conducted by the Bureau of the Census, the National Center for Health Statistics (NCHS), and other parts of the Centers for Disease Control and Prevention (CDC). Comparisons of data sets indicate high consistency in individual responses for White and Black populations (95 percent consistency) and for the Asian and Pacific Islander population (90 percent consistency) in the 1990 census National Content Reinterview Survey conducted by the Census Bureau. For American Indians and Alaskan Natives, reporting is less consistent (63 percent consistency in the 1990 National Content Reinterview Survey). Reporting race is also less consistent for multiple-race persons, Hispanics, the foreign born, and persons who do not read or speak English well. NCHS found Asians and American Indians are sometimes misreported as ''White'' on death certificates, and this causes an

underestimation of death rates for these groups. Nevertheless, these data quality problems are not so severe as to make the data unusable for most purposes.

Testimony at the four public hearings in 1994 and letters to OMB requested data on specific population groups that go beyond legislatively required levels of detail. Some groups say they have suffered discrimination in political and economic access but without data for their specific population group, they feel that the discrimination is not recognized. For others, the request for recognition of a particular nationality group seems to be primarily a matter of pride and identification with that population group.

Public comment indicates self-identification is important to many people. Some who commented requested different placement of their specific group within a broad group. Many people of more than one race, who under Directive No. 15 are told to choose one category that ''most closely reflects (their) recognition in (their) community,'' said they wanted to reflect their full heritage, not just part of it.

B. Summary of Issues and Suggestions Raised in Public Comment; Research Findings

In the June 9, 1994, **Federal Register** notice, OMB asked for public comment on (1) the adequacy of the current categories, (2) principles that should govern any proposed revisions to the standards, and (3) specific suggestions for changes that have been offered by various individuals and organizations.

This section summarizes the public comment (including comments from Federal agencies) that resulted from the June 9, 1994, **Federal Register** notice as well as research findings related to the particular issues. In an effort to be thorough in summarizing public comments the discussion below of specific data collection and presentation categories (Issue 6) is necessarily lengthy.

The issues and suggestions shown below are those raised in public comment and do not reflect OMB positions or decisions. OMB will not make decisions on the issues until mid-1997. The following six issues are discussed in this section:

Issue 1. Should the Federal government collect data on race and ethnicity? Should there be standards at all?

Issue 2. Should Directive No. 15 be revised? Should there be different collection standards for different purposes?

Issue 3. Should ''race/ethnicity'' be asked as a single identification or should ''race'' identification be separate from Hispanic origin or other ethnicities?

Issue 4. Should self-identification or the perception of an observer guide the methods for collection of racial and ethnic data?

Issue 5. Should population size and geographic distribution of groups be criteria in the final decision of Directive No. 15 categories?

Issue 6. What should the specific data collection and presentation categories be? This discussion includes a brief summary of public comments and previous research findings. Briefly, suggestions that have been made include:

(a) *White* (suggestions include adding categories for White ethnic groups; adding a category for persons from the Middle East or of Arab descent; and alternative wording for the category name).

(b) *Black* (suggestions include identification of geographic origin of ancestors; adding a category for Creoles; and alternative wording for the category name).

(c) *Asian or Pacific Islander* (suggestions include having three separate categories, one for Asians, one for Pacific Islanders, and one for Native Hawaiians; adding a new category for original peoples of acquired American lands (''indigenous populations'') that would include American Indians, Alaskan Natives, Native Hawaiians, and native American Samoans and Guamanians; and specifying major nationality groups).

(d) *American Indian or Alaskan Native* (suggestions include retaining the category with no change; expanding the definition of the category to include the Native Hawaiians and the indigenous populations of American Samoa and Guam; and alternative wording for the category name).

(e) *Multiracial* (suggestions ranged from not having any multiracial category to six suggestions for ways to identify multiracial persons).

(f) *Hispanic origin* (options include categories for subgroups; and alternative wording for the category name).

Detailed Discussion of the Six Issues

Issue 1. Should the Federal government collect data on race and ethnicity? Should there be standards at all?

Summary of views expressed on whether the Federal government should collect racial and ethnic data. Some agencies presently are required by Federal statute and regulation to collect racial and ethnic data. (See, for example, the Voting Rights Act of 1973 (1982) and the Civil Rights Act of 1964.) To end the collection of racial and ethnic data for these purposes, repeal of these statutes by Congress would be required. The view of those who favor continued collection of racial and ethnic data can be summed up by the words of the writer who said, ''* * * the measurable gains made in advancing a civil rights agenda to bring all Americans into the economic, political, and social mainstream would have been extremely difficult, if not impossible, if we did not have adequate information on racial and ethnic groups.''

Those who favor no collection gave as their reasons the following: (1) Doing so is divisive, archaic, unscientific, and racist; (2) it should not be a function of the Federal government (the government should be concerned only with citizenship) and the government has no need to know (tracking heritage is an individual choice and responsibility); (3) the government should collect ethnicity or ancestry instead of race; (4) there are no pure races, everyone is mixed, and therefore, the categories are meaningless; (5) people do not know their complete ancestry; (6) we are all supposed to have equal protection under the law (race neutral, color blind); (7) we are all Americans, we are a melting pot, we are one nation; (8) we are all human beings; (9) it is dehumanizing to categorize people like nuts and bolts; and (10) it is upsetting (for example, the categories are too limited; reminds people of the Nazi holocaust).

Should there be standards at all? Directive No. 15 is used widely and the strong consensus of public comment was to continue the issuance of standards for collecting data on race and ethnicity. The background and demand for the issuance of Directive No. 15 in 1977 is reviewed in 59 FR 29831, (1994).

As part of the public comment period, Federal agencies were asked to provide information about their requirements for data on race and ethnicity. Federal agencies report that the standards in Directive No. 15 have facilitated the exchange of data among agencies and among states, in instances where data are not used exclusively within a particular agency or program. Even where it is not required, Directive No. 15 standards are often used in State and business record systems and by marketers as a matter of convenience and to facilitate comparisons with other data sets.

The information also suggests, however, that Directive No. 15 may give a false sense of comparability and continuity among data sets. Even where

the definitions of categories are comparable, there have been variations in collection and processing procedures that lead to inconsistencies in the data. Additional differences occur because of the mix of self-identification and observer-identification of race and ethnicity.

Agencies having statutory requirements to use racial and ethnic data for *policy development, program evaluation, and civil rights monitoring and enforcement:* (1) Want historical continuity of the data; (2) generally oppose a ''multiracial'' category because the persons seeking this category are already covered by existing racial categories; (3) indicate that the perception of others is more valid for evaluating discrimination than individual self-identification; (4) note that standardized reporting formats, like the Employer Information Report, EEO–1, rely on observer identification; (5) express concern about the cost of making changes that will affect both Federal agencies, respondents, and other governmental bodies; and (6) generally favor the broad group structure of Directive No. 15 in its present format.

Data collection agencies have legislative authority to collect racial and ethnic data needed for Federal programs and in the case of the decennial census, for redistricting. They also use racial and ethnic data for *analyses of social, economic, and health trends* for population groups. These agencies said: (1) The categories in Directive No. 15 confuse some respondents because they are inconsistent, too broad for some purposes, and the concepts of race, Hispanic origin, and ancestry overlap; (2) historical continuity of the data is important; (3) it is important to be able to aggregate any new categories back to the 1977 Directive No. 15 categories; (4) corrections are needed in Directive No. 15 (for example, there is no category for South American Indians and only Hispanic Whites and Hispanic Blacks are identified in the minimum combined format); (5) subgroups of Asians and Hispanics were most frequently cited as a need but required data collection should be limited to groups with sufficient numbers to generate meaningful estimates; (6) a few agencies expressed interest in subcategories of the Black population (e.g., African, West Indian); and (7) for American Indians, some expressed a need to require the identification of Federal- versus state-recognized tribes. Many felt a ''multiracial'' category (that does not specify the races) is too heterogeneous and affects the counts of other groups in unknown ways.

Agencies that collect health data particularly need to know specific categories because some diseases and health problems are more prevalent among certain racial and ethnic groups. Data collection agencies are concerned about the significant operational, technical, and cost issues of a ''check all that apply'' approach for multiracial persons. For example, processing systems would have to be changed to allow for reporting more than one category. Additionally, Federal laws have been written with the assumption that persons identify with one racial group; these laws would either have to be changed or some method would have to be devised to meet legislative requirements.

Federal agencies have interpreted Directive No. 15 to apply only to primary data collection; data collection under grants may or may not comply with it.

Issue 2. Should Directive No. 15 be revised? Should there be different collection standards for different purposes?

Among those who favor collection of racial and ethnic data, there is significant difference of opinion as to whether Directive No. 15 should remain essentially as it is or should be revised. While some believe there should be no change in Directive No. 15, others say ethnic identification is in constant flux and Directive No. 15 should be changed now and subsequently reviewed periodically (for example, after every decennial census). The Directive No. 15 categories are nearly two decades old and many people say they no longer identify with the categories. Intermarriage, changes in immigration flows, and changes in ethnic consciousness are some of the reasons. These changes in our basic population structure suggest an increasingly diverse society and unforeseen future needs for racial and ethnic data.

Public testimony and research indicate that race and ethnicity are subjective concepts and inherently ambiguous. For purposes of collecting data in the United States, race and ethnicity are cultural concepts and social constructs. As stated in the current version of Directive No. 15, the racial and ethnic categories are not intended to reflect scientific or anthropological definitions of who should be included in a particular category. The definitions of the minimum set of population categories under Directive No. 15 include references to color, ancestry, and geographic origins in an effort to approximate social constructs of race prevalent in the United States.

In line with the subjective nature of the concept, research shows people change how they classify themselves with respect to race and ethnicity. There is significant inconsistency in the measurement of ethnicity particularly. Research shows different responses are summoned by the format of questions (open or specified categories), the number of categories, the examples listed, changes in self-perceptions within groups and among age cohorts, and the political climate.

The differing views of whether Directive No. 15 should be revised relate to the purpose for collecting such data. Federal agencies that use racial and ethnic data for regulatory programs, civil rights monitoring and enforcement generally oppose any revision of Directive No. 15 for the reasons described in Issue 1. Directive No. 15 is seen as providing practical guidelines for visual identification in a broad and relatively straightforward manner of the population groups that have historically suffered discrimination.

Where trend analysis of social and economic changes was the commenter's purpose, more detailed categories were often favored. The preference varies for other purposes such as policy development and program fund allocations. In the public hearings and letters to OMB, persons concerned with self-identification generally favored revisions that would provide more detailed categories and more freedom of choice (see Issue 6).

Given the distinct uses of racial and ethnic data in the Federal government (especially trend analysis versus regulatory and civil rights monitoring and enforcement), the possibility of a two-part Directive No. 15, with one part focusing on each purpose, has been suggested as an option if there are changes to Directive No. 15. Part A of Directive No. 15 could provide more detailed standards for use when a major purpose is trend analysis (such as in the decennial census and perhaps household surveys). Such a standard would track the increasing diversity of the U.S. population and provide better information to inform decisions about whether the categories for administrative and enforcement purposes should be expanded. Part B of Directive No. 15 could remain essentially unchanged for use in program evaluations and civil rights monitoring and enforcement.

There are disadvantages to having two levels of data collection specified in the standards of a revised Directive No. 15. The most serious disadvantage could be data sets with different counts of population groups that cannot be

related, a result of different coding and tabulation rules. This is especially the case if the specific races of multiracial persons are identified. Two sets of data could be confusing to data users who may be unsure of which set to use for various purposes. To prevent refocusing the problem from data collection to tabulation, there would have to be generally agreed-upon procedures and guidelines for how agencies would tabulate data for program purposes. The procedures should ensure that detailed data collections could be tabulated back to the broad categories of the 1977 Directive No. 15 in a standard way across programs. Standard and generally agreed-upon tabulation rules would be needed for the various combinations of multiracial entries, including those where neither race is ''White.'' The Bureau of the Census already has procedures for aggregating detailed data from the 1990 census to the broader categories of Directive No. 15. The reaggregations could become more complicated because of the different assumptions that would be required. The requests of some groups who do not feel they fit into existing categories (e.g., some Arabs, Creoles, and Cape Verdeans) suggest that aggregations could become even more problematic. Also, the quality of the reaggregated data can vary by geographic area.

Some say *cost* should not be an ''excuse'' for failing to improve data collection on race and ethnicity, especially where the data are used for protection of civil rights. Others expressed concern about the cost of making changes to Directive No. 15 when the broad categories are acceptable choices for most of the population and cover programs affecting almost all persons. Added costs associated with more detailed categories are discussed in Issue 6 below.

Federal, State, and local government agencies urged that any revisions ensure that data can be tabulated back to the 1977 categories. Most expressed a preference to maintain historical continuity of the two decades of data sets with the understanding they are not perfectly comparable. It was also recognized that final tabulations give the data an appearance of comparability among data sets when actually there are differences caused by data collection methods (especially self-identification versus identification by observers). Nevertheless, the data are widely accepted by courts and government agencies as reliable indicators of change in housing patterns, redistricting, and labor markets.

If there are revisions to Directive No. 15, research indicates that changes in the race and ethnic categories on *administrative records* will present problems in data comparability over time. The categories on the records reflect what they were as of the time of initial enrollment and the categories are generally carried without change for decades. Administrative records are often collected from State and local sources, which have a variety of recordkeeping practices, are not required to meet Directive No. 15 (but often do), and are unlikely to collect information for detailed categories. A few States now require a ''mixed race'' category. There will be increasing value to the Federal government if State records use the same categories as Directive No. 15.

Federal and State government agencies emphasized that if there are revisions, a reasonable amount of time needs to be given to phase in the changes.

Issue 3. Should ''race/ethnicity'' be asked as a single identification or should ''race'' identification be separate from Hispanic origin or other ethnicities?

Directive No. 15 states that it is preferable to collect data on race and Hispanic separately to allow flexibility. If a combined format is used to collect racial and ethnic data the minimum acceptable categories are: American Indian or Alaskan Native; Asian or Pacific Islander; Hispanic; White, not of Hispanic origin; and Black, not of Hispanic origin. The use of the Hispanic category in the combined format does not provide information on the race of those selecting it. As a result, the combined format makes it impossible to distribute persons of Hispanic ethnicity by race and, therefore, reduces the utility of the four racial categories by excluding from them persons who would otherwise be included. Thus, the two formats currently permitted by Directive No. 15 for collecting racial and ethnic data do not provide comparable data.

Public testimony reflected some data problems with the standards in Directive No. 15. The combined format does not provide for identification of Asians or American Indians with Hispanic origins, and would classify the people of Equatorial Guinea, who are geographically Africans but who speak Spanish, as Hispanic. There is no apparent category for Central and South American Indians.

Some persons from non-Hispanic ethnic groups questioned why Hispanics had been singled out as the only ethnic group specifically identified in Directive No. 15. Others objected to the term ''non-Hispanic'' because it defines people by what they are not. For example, rather than ''White, not of Hispanic origin,'' a category might be ''White, European ethnicity'' or ''American Indian, Mexican.'' This approach would require a question that identifies ancestry groups within the broad race groups.

Most Federal agencies did not comment on whether race and Hispanic origin should be collected in one question or two questions, although many agencies have been using the combined format for a number of years and have developed data series with the resulting data. Those few that commented were split on the issue.

The public indicated differences of opinion also. Those who favored asking race and Hispanic origin separately said Hispanics were a multiracial population and a cultural (not a race) group. Many Latin American countries are populated by immigrants from parts of Europe other than Spain. Many wanted to identify Asian-Hispanics and American Indian-Hispanics. Research shows Hispanics who self-identify as White also fare better economically; thus, some said two questions were needed because ethnicity alone was insufficient for determining which Hispanics are likely to be victims of discrimination. Others were concerned with historical continuity of data concepts and wanted to be able to generate statistics for the total White and total Black population. When separate questions are used to collect racial and ethnic data, there is also a technical matter of which question should be asked first.

Some who favored asking race/Hispanic origin as one question said many Hispanics do not identify themselves as a race. Others favored this approach as a way to end the practice of using the term ''race'' which they see as a social rather than a scientific construct.

For some individuals, race and ethnicity may not be clearly separable. One proposed solution is to ask a single race/ethnicity question (that is, one question in which ''Hispanic'' is included in the list with the broad race categories) and allow respondents to mark all that apply. Hispanics who identify with a race category could mark both categories. Hispanic respondents who do not identify with any race category could mark ''Hispanic'' only. The question would correspond to self-perceived membership in population groups defined by cultural heritage, language, physical appearance, or other characteristics.

Some research supports the public comments that some respondents are confused about how to respond to

separate race and Hispanic origin items. In the 1990 census, 4 in 10 Hispanics marked ''Other'' in the race question and about 10 percent of the population did not respond to the Hispanic origin item. The 1990 census reinterview study, in which the answers given by a sample of respondents to the 1990 census were compared with answers they gave in a reinterview after the census, also showed that Hispanics had high levels of inconsistent reporting in the race item. These results indicate the question may not be operating as intended.

Cognitive research shows that many Hispanics perceive redundancy in separate race, Hispanic origin, and national origin questions. Some Hispanic respondents do not identify with the Black or the White category, and are offended by an ''Other race'' category (which they interpret to mean that Hispanics are less important than other races since they do not have their own ''label''). For some, ''White'' is synonymous with ''Anglo'' meaning non-Hispanic. For example, in a focus group, a Mexican-American man said that where he lived people were either Mexicans or Anglos. He was confused by a race question that seemed to be trying to make him say he was White and to his mind, non-Hispanic. In an analysis of the responses of Hispanics to the race question in the 1990 Panel Study of Income Dynamics, Cubans were the most likely and Mexican-Americans the least likely to identify themselves as ''White.'' Cognitive research shows some Hispanics, especially the foreign born, expect to see a single category for Hispanics.

If race and Hispanic origin are asked as two separate questions, there is the issue of whether to ask race or Hispanic origin first. Research done since 1987 indicates that additional instructions and asking Hispanic origin first reduce nonresponse to that question. Asking Hispanic origin first also reduces reporting as ''other race'' and increases reporting as ''White'' by U.S.-born Hispanics but not by immigrants. A large minority of respondents still report as ''other race.'' The Census Bureau will conduct research in the 1996 National Content Test for the 2000 census to determine whether placing the Hispanic item first affects consistency of responses and reporting in the race category among subgroups not adequately represented in other studies.

The future research agenda is described in Section C below.

Issue 4. Should self-identification or the perception of an observer guide the methods for collection of racial and ethnic data?

At the heart of criticisms and public requests for review of Directive No. 15 is the feeling of some persons, particularly those of mixed heritage, that they cannot accurately identify their race and ethnicity as they prefer in Federal data systems using the current categories. They say the government should not limit their choice of identification. As stated in the second principle for the review of racial and ethnic categories (Section D below), ideally OMB prefers that self-identification should be facilitated to the greatest extent possible but there are data collection systems where observer identification is more practical. Federal censuses, surveys, and vital records give preference to using self-identification; that is, having the individual (or in some cases a proxy respondent) provide the information requested about his or her race and Hispanic origin.

Research shows that ethnic *groups* evolve and may modify their preferred ethnic group names; *individuals* may represent their affiliation with groups differently depending on the situation and may alter their perceived ethnic membership over time. Category names need to be acceptable and generally understood both by members and nonmembers of the groups to which they apply.

Self-identification is not the preferred method among Federal agencies concerned with monitoring and enforcement of civil rights. They prefer to collect racial and ethnic data by visual observation. Since discrimination is based on the perception of an individual's race or Hispanic origin, these agencies oppose any changes that would make it more difficult to collect data by observation. Such proposed changes include the suggested ''multiracial'' category as well as identification of national origins and ethnicities (for example, ''Arab'' or ''Cape Verdean''). These agencies say that if categories are more detailed and include nationality groups, or if there is a ''multiracial'' category (and especially if the multiple races have to be identified), it would be virtually impossible to give instructions for how to classify by visual observation.

Additionally, they report it is their experience that direct inquiry about a person's race, ethnicity, or national origin sometimes raises concerns among employees or other respondents about the purpose of collecting the data.

American Indian groups express concern about self-identification. Tribal recognition of status as an American Indian or Alaskan Native (Alaskan Indian, Eskimo, or Aleut) is a legal definition, not one of long-ago ancestry. In the 1990 census, 8.7 million persons reported in the ancestry question that they were American Indian but only 1.9 million reported American Indian race. Only 3 of 4 who reported ''American Indian'' as their race gave ''American Indian'' as their first ancestry; about 9 percent gave an European first ancestry. There are also regional effects in reporting American Indian as a race related to the prevalence of intermarriage, migration, Federal recognition of regional tribes, and attitudes towards Indians.

Development of Federal data sets includes increased use of administrative records matched to survey data for trend analysis. This makes the issue of data collection methods, both by observation and self-identification, a greater technical difficulty than in the past. Where identification is by observers or proxy respondents, blood relatives may be identified differently in administrative records and an individual may be identified differently among data sets.

Issue 5. Should population size and geographic distribution of groups be criteria in the final decision of Directive No. 15 categories?

Many of the groups for which data collection has been requested are numerically small and often are found primarily in specific geographic areas. In national sample surveys, these factors often make it unreasonably costly or burdensome on the public to collect reliable data. A question that allows for self-identification to the greatest extent possible may be very lengthy. Some see this as a technical problem, others do not.

There are difficulties with using size of population as a basis for making a population group a specific category. The size of the population is itself a subject of controversy at times.

For sample surveys, how small is ''too small''? Sample data can provide only an estimate of a number and not, with 100-percent certainty, the true number itself. The smaller the group, the more unreliable estimates are with respect to sampling error. For example, in the Current Population Survey (CPS), a national survey of households, summary measures such as means and percentage distributions are shown only when the population base is 75,000 or greater. An example of how much sampling error increases in a survey as the population size of a group decreases can be provided for a characteristic such as the poverty rate. If the estimated poverty rate for the total U.S. population is about 14 to 15 percent (a 90-percent confidence interval), then for a population group of 1 million persons,

the poverty rate would be about 8 to 21 percent; for a population group of 500,000 persons, the poverty rate would be about 6 to 23 percent; and for a population group of 200,000 persons, the poverty rate would be about 1 to 28 percent. (A 90-percent confidence interval can be interpreted roughly as providing 90-percent confidence that the true number falls between the upper and lower limits.) The accuracy and reliability of an estimate depends not only upon sample sizes, but also upon whether the groups are ''controlled'' (i.e., weighted to independent estimates). Estimates of the Asian and Pacific Islander population from the 1994 March Current Population Survey differed by about 20 percent from demographic estimates due primarily to this factor.

One person suggested that groups should constitute at least one percent of the population (nationally, about 2.6 million in 1994) to be considered as a separate category. A time frame and data source would have to be agreed upon if such a guideline were considered.

Issue 6. What should the specific data collection and presentation categories be?

There are no clear, unambiguous, objective, generally agreed-upon definitions of the terms, ''race'' and ''ethnicity.'' Cognitive research shows that respondents are not always clear on the differences between race and ethnicity. There are differences in terminology, group boundaries, attributes, and dimensions of race and ethnicity. Historically, ethnic communities have absorbed other groups through conquest, the expansion of national boundaries, and acculturation.

Groups differ in their preferred identification. Concepts also change over time. Research indicates some respondents are referring to the national or geographic origin of their ancestors, while others are referring to the culture, religion, racial or physical characteristics, language, or related attributes with which they identify. The 1977 Directive No. 15 categories are a mix of these. The categories do not represent objective ''truth'' but rather, are ambiguous social constructs and involve subjective and attitudinal issues.

Some said the categories should reflect ancestry or cultural affiliation rather than skin color. Some wanted to indicate they were ''American'' and had ancestry from a particular geographic region (''hyphenated Americans'') while others opposed this (''we are all Americans''). Cognitive research indicated that some people use race and ethnic origin interchangeably; they see little difference between the two concepts. Most people do understand the concept of ancestry.

Some groups stated that their preference was for standard categories that would maximize the size of their population because they believed larger numbers provide importance in society and greater political leverage.

In short, groups differed in what they considered the most desirable standard. It is impossible to satisfy every request for racial and ethnic categories that OMB received; such a list would be both lengthy and contradictory. Some persons requested religious identification; this option is not discussed below because the Federal collection of religious affiliation has been interpreted as possibly violating the separation of church and state.

Some suggested a completely open-ended question with no standard categories for data collection; rather, standards would be set for data tabulation. An open-ended question is discussed in part (e), Multiracial option (2)(cc).

Below is a discussion of public comment with regard to the current broad categories of ''White,'' ''Black,'' ''Asian or Pacific Islander,'' ''American Indian or Alaskan Native,'' and ''Hispanic origin.'' Part (e) below discusses options with respect to classification of persons of multiple races, a category that does not exist in the current standards. Where possible, in the discussion of options and their pros and cons, past research results are included.

As part of the discussion of options, the cost of proposed changes with respect to collecting, tabulating, and analyzing data is an essential consideration (see Section D, General Principle 8). Any changes in Directive No. 15 will be imposed on tens of thousands of State and local agencies such as law enforcement agencies (through the Uniform Crime Reporting system), school districts, the business community, and others required to use the Directive in reporting these data to the Federal government. If administrative records for Federal programs have to be completely updated to meet a new standard, there will be significant costs to entities that report to the Federal Government. For example, the State of Florida estimates it would cost $2 million to change school enrollment records.

Changes in the current Directive No. 15 would also entail additional processing costs as software and sometimes data capture methods would have to be changed. For example, it is more expensive to capture and code handwritten responses to open-ended questions than fixed, pre-determined categories. Some of the increased costs associated with categories more detailed than the current Directive No. 15 would include:

- Interviewer training for implementing changes in collecting these data and updating of interviewer instruction manuals;
- Additional interview time to collect more detailed data;
- The technical and practical difficulty of administering more detailed or more complex categories (such as long lists of nationalities, especially if multiple responses are allowed) in telephone surveys;
- Increases in computer reprogramming and data processing costs;
- Increases in the likelihood of litigation over data aggregation and processing decision rules;
- Increases in the costs of disseminating data in hard copy or electronic format and storing larger computer data files;
- Updating program manuals, regulations, and recordkeeping requirements to reflect changes; and
- Making data analysis more complex.

The cost considerations described above apply, in varying degrees, to any change and so are not described further in the discussion below of pros and cons for the various options raised in public comment.

(a) White

In Directive No. 15, the ''White'' category includes persons having origins in any of the original peoples of Europe, North Africa, or the Middle East. The public comment included suggestions for subcategories and related changes in terminology to collect more detailed information on White ethnic groups according to the geographic region of their ancestors. This summary reports only on options proposed during public hearings and in the public comment period. It also highlights pros and cons for these options as raised in public comment or shown by research. Inclusion in the summary does not reflect OMB endorsement of the comments or suggestions. Requests included:

Options Suggested in Public Comments

(1) Collect data for White ethnic groups according to the country of ancestral origin (for example, German, Scottish, or Irish). Some prefer other terms such as ''European-American,'' or ''German-American'' and some

requested that ''European'' be further subcategorized into ''Western European'' and ''Eastern European.''

Some suggested subcategories for identifying the original peoples of Europe, North Africa, and Southwest Asia (Middle East).

Pros of Option (a)(1):

• Collection: Some persons identify more with their ancestry than with ''White'' as a racial category.

• Tabulation and analysis: Indicates the ethnic diversity of the ''White'' population.

Cons of Option (a) (1):

• Collection:

—Physical space on forms: If national origin groups are listed, considerably more space would be needed.

—Telephone interviews: More difficult than currently, especially if national origin groups are listed; more time consuming to ensure that respondent is given the opportunity to understand the possible choices.

—Data quality: Effect on counts of specific nationality groups if country not listed as an example; count also affected by which nationalities/countries are listed; respondent may be confused between reporting ancestry (e.g., German) versus country of birth (e.g., Russia); and some respondents do not know their ancestry.

—Categories not required by Federal legislation/programs and States unlikely to collect this detail in administrative records.

—Visual observation: Nationality not easily determined.

• Tabulation and analysis: Need rules for tabulating multiple ancestries. More categories add costs for tabulation and analysis. It is more complex to analyze and report on many nationalities as compared with single race categories.

(2) Create a separate category for Arabs/Middle Easterners (currently included as part of the ''White'' category) in order to distinguish this population from persons of European descent in the ''White'' category. The public comment offered different suggestions for the name of the category and how to define the population group it would be intended to cover. Some comments supported a separate category for the decennial census enumeration, but not necessarily adding a separate category to the minimum set of racial and ethnic categories in Directive No. 15. These suggestions included:

—Create a geographically oriented category called ''Middle Eastern'' (based not on race but on region of origin) for persons from the Middle East/North Africa and West Asian region, regardless of their race, religion, or language group. It would include Arab states, Israel, Turkey, Afghanistan, and Iran. Some suggested also including Pakistanis and Asian Indians in their geographic definition of the term. Data availability on subsets of the Middle Eastern regional category was also requested. Some comments referred to the ''Middle Eastern'' category as an ethnic identifier; some favored the addition of a ''Middle Eastern'' category to the list of basic racial and ethnic categories; and others suggested a ''Middle Eastern'' subcategory be created within the ''White'' category. Those preferring a ''Middle Eastern'' to an ''Arab'' category felt that the category would build on the other regionally defined categories, consolidate people from different countries but with similar cultural/geographic experiences regardless of race, and distinguish them from persons of European descent in the ''White'' category.

—Add an ethnic category called ''Arab-American'' based on a linguistic and cultural approach to the minimum set of categories in Directive No. 15. Those who preferred the term, ''Arab'' said Arabs, like Hispanics, are an ethnic group of mixed race and have a shared language and culture. They would make ''Arab'' a separate category rather than part of the ''White'' category; they would leave North Africans, who are not Arabs, as part of the ''White'' category.

—Reclassify ''Muslim West Asians'' as part of the ''Asian or Pacific Islander'' category.

Pros of Option (a)(2):

• Collection:

—A separate category would satisfy Arab/Middle Eastern respondents who do not think of themselves as ''White'' or as having any identity in common with Europeans.

—A separate category would facilitate self-identification and could possibly improve the quality of the data on Arabs/Middle Easterners.

—Telephone survey: Easy to ask if it is the only category added; however, if additional categories are added, it may be problematic.

• Tabulation and analysis:

—Would provide treatment comparable to Hispanics (and in some data sets, specific Asian nationality groups).

—Data could be used in policy development, in delivery of services and needs assessments, for civil rights monitoring and enforcement, and in health research.

—Reflects the ethnic diversity of the ''White'' category.

Cons of Option (a)(2):

• Collection:

—Requires space on form for an additional category.

—There was no general agreement in public comment about the geographic definition of ''Middle East.'' For example, there is disagreement in public comment about whether Pakistanis and Asian Indians are included if the term, ''Middle Eastern'' is used. The term, ''Arab'' clarifies that Asian Indians and Pakistanis would remain classified with Asians, which some consider preferable for historical continuity; no requests were received from Asian Indians or Pakistanis to be reclassified. Public testimony indicated inconsistencies in understanding which countries should be included as ''Arab.''

—Identification by observers: Because some Arabs are light-skinned and some are dark-skinned, identification by visual observation is prone to error.

• Tabulation and analysis:

—A separate Arab/Middle Eastern category may affect the historical comparability of data in the ''White'' category and may affect the counts of other racial groups since Arabs are a mixed racial group.

—Adds a category on many national surveys for a geographically concentrated population (about half of the Arab population is concentrated in Detroit, New York, Los Angeles, and Washington, DC).

—Relatively small population (less than 900,000 according to the 1990 census, although Arab groups claim 1–3 million). Geographically, ''Middle Easterner'' as a category would include persons other than Arabs.

(3) Alternative words suggested for ''White'' include ''Caucasian'' and ''Anglo.''

Pros of Option (a)(3):

• Collection: ''Caucasian'' preferred by some respondents.

Cons of Option (a)(3):

• Collection: ''Anglo'' generally refers to Whites of European ancestry and excludes Hispanics; this would affect historical continuity. The term tends to be used regionally and may not be generally understood.

Past research results/literature review: Some object to the term ''White'' (for example, in cognitive research one said, ''white is the color of paint'' and in a letter another said, ''I am not the color of this paper''). Some preferred the term, ''Caucasian.'' Ethnicity is largely

symbolic or optional for many Whites. Whites often reported inconsistently, as ''American,'' or not at all in response to the 1990 census ancestry question. A significant number of Whites do not strongly identify with a specific European ethnicity. This has been the case for decades. For example, only about 55 percent of matched persons who reported English, Scottish, or Welsh in the March 1971 Current Population Survey (CPS) reported the same origin in March 1972. The ''example effect'' is very strong for White ancestry groups. For example, in two surveys held five months apart, 40 million people reported English as their ancestry and in the other, nearly 50 million said they were English. The only difference was placement of a question on language use in their home (English for 90 percent of the population) after the ancestry question in the second survey and farther apart in the first survey. ''German'' was the first example in the 1990 census ancestry question and, as a result, the German population appeared to grow very rapidly. Some Whites, however, do identify strongly with their ancestry and were confused by the 1990 census race question which listed nationality groups for Asians and Hispanics but not for Whites.

(b) Black

The term ''Black'' in Directive No. 15 refers to a person having origins in any of the Black racial groups of Africa. There were suggestions to change the definition to ''persons having origins in any of the Black peoples of Africa,'' or to define the term to include all Black persons regardless of country of origin or country of citizenship. Requests were made to identify Blacks according to the geographic region of their ancestors. ''African-American'' and ''Black African-American'' were suggested as names for the category (the suggestions of ''Black American'' and ''Amerofian'' (described as Blacks who are American Natives, European, and West African) are not discussed below). This summary reports only on options proposed during public hearings and in the public comment period. It also highlights pros and cons for these options as raised in public comment or as shown by research. Inclusion in the summary does not reflect OMB endorsement of the comments or suggestions. Requests included:

Options Suggested in Public Comments

(1) Collect data for Black ethnic groups according to geographic origin of Black ancestors (African, Haitian, Jamaican, Caribbean, West Indian, Brazilian, Ethiopian, etc.).

Pros of Option (b)(1):

• Collection: Easy to ask in a telephone survey. Some persons identify more with their ancestry than with ''Black'' as a racial category.

• Tabulation and analysis: Useful for research on health, diversity, needs assessments, trends analysis; does not affect historical continuity. Indicates the ethnic diversity of the Black population.

Cons of Option (b)(1):

• Collection:

—Determining geographic origin or nationality/ancestry by visual observation would be difficult and prone to error.

—If national origin groups are listed, considerably more space would be needed on forms.

—Telephone interviews would be more difficult than currently, especially if national origin groups are listed; more time consuming to ensure that respondent is given the opportunity to understand the possible choices.

• Tabulation and analysis: Data not needed for Federal program evaluation and enforcement. States are unlikely to collect this detail in administrative records. Count of specific nationality groups could be affected if respondent is confused between reporting ancestry (e.g., Haitian) versus country of birth (e.g., Virgin Islands); some respondents do not know their ancestry. Rules would be needed for tabulating multiple ancestries. More categories add costs for tabulation and analysis. It is more complex to analyze and report on many nationalities as compared with single race categories.

(2) Create a separate category for Louisiana (French) Creoles. They objected to categorization with Blacks as they are a multiracial/ethnic group (African, French, American Indian, and Hispanic).

Pros of Option (b)(2):

• Collection: Easy to ask in a telephone survey if it is the only category added; however, if additional categories are added may be problematic.

Cons of Option (b)(2):

• Collection: Extra space on forms; extra time in telephone interview.

• Tabulation and analysis: Small population size. Affects historical continuity of data sets.

(3) Use the alternative term, ''African American'' or ''Black, African-American.''

Pros of Option (b)(3):

• Collection: Commonly-used identification for Blacks born in the United States or Blacks whose parents are Americans.

Cons of Option (b)(3):

• Collection:

—Excludes Africans who are not American citizens.

—Term generally refers to Blacks but respondents could reasonably be confused as to whether to include Whites, Asians, or others born in Africa (especially North Africa). Could affect historical comparability of data.

—Blacks born in Brazil or the Caribbean (especially immigrants) do not identify with the term, ''African American.'' Some Blacks who have been in the United States for generations have no record of where in Africa their ancestors were born and do not wish to be called ''African-Americans.''

—Use of ''American'' increases respondent error by persons who are not Black but who wish to identify as ''Americans.''

• Tabulation and analysis: Refers to a continent, not a country.

(4) Provide a separate category for Cape Verdeans (Portuguese and African ancestry from Cape Verde on the western tip of Africa. This is mostly a multiracial population. ''Cape Verdean'' is generally considered a national, ethnic and linguistic designation rather than a racial designation). The category could be an ethnic category rather than a racial category as is the case for persons of Hispanic origin.

Pros of Option (b)(4):

• Collection: Would satisfy Cape Verdean respondents and is easy to ask.

• Tabulation and analysis: Useful for civil rights monitoring and enforcement in State of Massachusetts.

Cons of Option (b)(4):

• Collection:

—Visual identification of Cape Verdeans prone to error because of various skin colors. People within the same family say they are identified differently.

—Adds a category for a small, geographically concentrated population.

• Tabulation and analysis: Not required for Federal programs.

Past research results/literature review: In surveys from 1989 to 1991, more Blacks said it did not matter if they were called ''Black'' or ''African American'' than said they preferred one over the other. Among those with a preference, the ratio choosing ''Black'' over ''African-American'' was 1.2 to 1. In a 1993 survey in the Chicago area, a majority of Blacks preferred ''African American'' for their ethnicity and ''Black'' for their race but the proportion had declined since 1991.

Several studies of Blacks with roots in the Caribbean or Africa show they do not feel they share a common history or culture with American-born Blacks and distinguish themselves from this population. Further research is needed on the terminology that is generally understood or most acceptable. In the 1990 census, about 370,000 persons wrote in an entry classified as ''Black''; about three-fourths of these were ethnic subgroups such as Jamaican and Haitian. Cognitive research suggests that many foreign-born Blacks interpreted the race question in terms of national origin rather than race.

(c) Asian or Pacific Islander

The definition used for ''Asian or Pacific Islander'' in Directive No. 15 refers to a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, and the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, the Hawaiian Islands, and Samoa. Public comment indicated confusion about which countries are included in this definition, particularly for ''Indian subcontinent'' and whether the aboriginal peoples of Australia are included in this category. Requests were made to have separate categories for Asians and Pacific Islanders and to provide additional subcategories under ''Asians'' to describe better this diverse population; to move Native Hawaiians, American Samoans, and Chamorros to either a separate category or to the ''American Indian or Alaskan Native'' category. This summary reports only on options proposed during public hearings and in the public comment period. It also highlights pros and cons for these options as raised in public comment or shown by research. Inclusion in the summary does not reflect OMB endorsement of the comments or suggestions. Requests included:

Options Suggested in Public Comments

(1) Make two categories, one for ''Asians'' and one for ''Pacific Islanders.'' Pacific Islanders include indigenous populations from American Samoans, Carolinians and Chamorros, and Native Hawaiians, as well as other population groups in the Pacific Islands. Native Hawaiians have a specific legal status in Federal statutes different from other indigenous Pacific Islanders.

Pros of Option (c)(1):

• Collection:

—Easy to ask in a telephone survey.
—Categories are mutually exclusive.

• Tabulation and analysis:

—Pacific Islanders are culturally and ethnically distinct from Asians so separate data would be useful for trends analyses, needs assessments, and health research. Historical continuity can be maintained by aggregating ''Pacific Islanders'' with ''Asians.''
—Separate categories for Pacific Islanders and for Native Hawaiians would meet program needs of the Department of Veterans Affairs to report on veterans from specific minority groups.

Cons of Option (c)(1):

• Collection:

—Adds a category.
—Respondents may be confused as to the exclusion or inclusion of Native Hawaiians and other indigenous populations which could seriously affect data quality.
—Effect on data collected by visual observation is unknown.

• Tabulation and analysis:

—Pacific Islanders are geographically concentrated and a relatively small population group for a separate category.

(2) Specify major Asian nationality groups.

Pros of Option (c)(2)

• Collection: Done successfully in the 1990 census.

• Tabulation and analysis: Indicates diverse and significant differences in the characteristics of the Asian population; potentially useful in analyses of health and other trends.

Cons of Option (c)(2):

• Collection:

—Requires significant physical space on forms.
—Telephone interviews: Tedious to read long lists.
—Identification by observers: difficult to determine specific nationality.

(3) Develop a new category for original peoples of acquired American lands (''indigenous'' populations). This would include persons having origins in any of the original peoples of North America who maintain cultural identification through tribal affiliation or community recognition (American Indians, Alaskan Indians, Aleuts, and Eskimos); the Hawaiian Islands; American Samoa; Guam; and the Northern Marianas. Some suggested this be a ''Native American'' category. Refer also to Option (d)(2) below.

Pros of Option (c)(3):

• Collection:

—Many Native Hawaiians preferred this option. They do not consider themselves Asians and they insist that they are not immigrants to the United States. They said that including them in the large ''Asian or Pacific Islander'' category resulted in data that do not accurately reflect their social and economic conditions. Some representatives of Asian groups supported this suggestion.
—No increase in the number of categories.
—Category mutually exclusive.

• Tabulation and analysis:

—Inclusion of indigenous Pacific Islanders as ''Asians or Pacific Islanders'' masks their economic status. For example, Pacific Islanders have relatively high poverty rates. They also have health issues and educational needs different from Asians.

Cons of Option (c)(3):

• Collection:

—This might be viewed as a political category rather than as one commonly recognized by most individuals in society.
—Respondent error likely both on forms and in telephone surveys as ''indigenous'' or ''original peoples'' are not familiar terms to most of the population; the term, ''native'' is interpreted to mean any person born in a particular area. No generally-understood choice for the category name.
—Unknown how data collected by visual observation would be affected.

• Tabulation and analysis:

—Opposed by most American Indian tribal governments and organizations as they preferred to maintain a category which refers specifically to American Indians.
—Heterogeneous population in terms of characteristics; data would be less useful than currently for policy development, trend analyses, and needs assessment. Not useful for health research. American Indians were particularly concerned about possible effects on the quality of data needed for programs and funding.

(4) Have a separate category for Native Hawaiians (defined as individuals who are descendants of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii). Change ''Hawaiian'' to ''Hawaiian, part-Hawaiian,'' because most Native Hawaiians are part Hawaiian and many, in the past, have categorized themselves as ''White.''

Pros of Option (c)(4):

• Collection:

—Clearcut, simple and mutually-exclusive category for those who identify as Native Hawaiians.

—Easy to ask in a telephone survey.

• Tabulation and analysis:

—American Indian groups, concerned with an accurate count of their population, preferred this option to including Native Hawaiians in the ''American Indian or Alaskan Native'' category.

—Provides specific information for policy development, trends analyses, needs assessments, program evaluation, health research, and civil rights enforcement.

Cons of Option (c)(4):

• Collection:

—Adds a category.

—High respondent error likely as some persons born in Hawaii but who do not have their origins in any of the original peoples of Hawaii likely to be confused by the term ''Native.'' Because the Native Hawaiian population is relatively small (211,000 according to the 1990 census race question), respondent error could seriously affect the count.

—Unknown how data collected by visual observation would be affected.

—Addition of ''Part-Hawaiian'' will affect historical comparability of ''White'' category in Hawaii to some small extent.

• Tabulation and analysis: Very small population group.

Past research results/literature review: The proportion of Asian and Pacific Islanders such as Cambodians and Laotians (groups not listed separately) reporting in the ''other race'' response circle to the 1990 census race item may be due to question design. Additionally, persons who were not Asians or Pacific Islanders marked the circle for ''Other Asian or Pacific Islander.'' Of persons marking the ''Other Asian or Pacific Islander'' circle in the 1990 census, 54 percent of the write-ins were not consistent with the marked circle and nearly 40 percent were Hispanic group write-ins.

(d) American Indian or Alaskan Native

The category of American Indian or Alaskan Native in Directive No. 15 includes persons having origins in any of the original peoples of North America and who maintain cultural identification through tribal affiliations or community recognition. This summary reports only on options proposed during public hearings and in the public comment period. It also highlights pros and cons for these options as raised in public comment or shown by research. Inclusion in the summary does not reflect OMB endorsement of the comments or suggestions. Requests included:

Options Suggested in Public Comments

(1) Suggestions for change in category title include: ''American Indian, Alaskan Indian, Eskimo, and Aleut''; ''American Indian, Alaskan Indian, Aleut, or Eskimo''; ''Federally Recognized American Indian and Alaskan Native''; and ''Native American.'' Some prefer ''Alaska Native'' to ''Alaskan Native.'' Suggestions also include collecting information on Tribal enrollment.

Pros of Option (d)(1):

• Collection: ''Alaskan Indian,'' ''Eskimo,'' and ''Aleut'' are more specific terms than ''Alaskan Native'' and reduce respondent error.

• Tabulation and analysis:

—''Federally recognized American Indian and Alaskan Native'' meets Federal program needs as it indicates the legal (rather than racial) status of persons in this category. The federal trust responsibility to provide various educational, health, and housing services extends only to federally recognized American Indian and Alaskan Native tribes and their members and descendants of members. More people self-identify as being of American Indian or Alaskan Native race or descent than are enrolled in tribes or can prove descendance, which tribal governments feel deprives their people of benefits rightfully belonging to them under Federal programs.

—Inclusion of the term, ''Federally recognized'' will affect historical continuity but for the future, it could clarify the intention of the category and reduce the changes over time in the numbers included in the category.

Cons of Option (d)(1):

• Collection:

—The term, ''Alaskan Native'' results in respondent error because some persons born in Alaska but who do not have Alaskan Indian, Eskimo, or Aleut origins are confused by the term.

—Some individuals of tribes not Federally recognized may not be aware of the status of their tribe (e.g., State recognized tribes or tribes awaiting recognition).

—When tribal enrollment/descendance is not required information, possible overcoverage occurs because the category is marked by many persons with American Indian ancestry but no legal tribal affiliations or community recognition. This possible overcoverage could become more serious if there is an instruction to ''check all that apply'' to allow multiracial persons to identify their specific racial groups and they respond in terms of ancestry further back than their immediate parents.

—The term, ''Native American,'' is an unacceptable term to many American Indians. It is also confusing to some persons who are not American Indians but who use the term to indicate they were born in the United States. The term appears to include Native Hawaiians although this is not entirely clear. ''Aboriginal population,'' while technically correct, is considered by many to be a demeaning term. ''Indigenous populations'' include persons having origins in any of the original peoples of North America, the Hawaiian Islands; American Samoa; Guam; and the Northern Marianas Islands. The terms, ''aboriginal population,'' ''indigenous populations,'' and ''original peoples,'' are not generally understood and would likely result in misreporting.

—It is unclear where South American Indians, Russian and European aboriginal tribes, or Australian aborigines who have immigrated to the United States are classified. Some think the current Directive No. 15 categories exclude these populations. Others include in the definition of ''American Indian,'' all the aboriginal peoples of North America (except Eskimos and Aleuts) and of Central and South America. Some suggest a separate category for ''other indigenous tribes'' to include tribes such as Mapuchi and Mayan.

(2) Change the category to include Native Hawaiians and other indigenous populations. Suggested category names include: ''American Indian, Alaskan Native, or Native Hawaiian''; ''American Indian, Alaskan Native, Native Hawaiian, and American Samoan''; ''aboriginal population''; ''indigenous populations''; and ''Indigenous/Aboriginal People'' (also see discussion under (c)(3) above).

Pros of Option (d)(2):

• Tabulation and analysis: Native Hawaiians are not Asians or immigrants to the United States.

Cons of Option (d)(2):

• Tabulation and analysis:

—There is a legal distinction between ''American Indians and Alaskan Natives'' and ''Native Hawaiians.'' Native Hawaiians are not eligible for the majority of programs and services available to American Indians and Alaskan Natives. Indian tribes are self-governing political entities. For example, the legislative mandates for Indian Health Service and the Bureau of Indian Affairs pertain only to American Indians and Alaskan

Natives. On the other hand, some programs for ''Native Americans'' includes Native Hawaiians as well as American Indians and Alaska Natives. Native Hawaiians are of Polynesian/Pacific Islander descent and are not descendants of the original peoples of North America. They have a distinct culture and social environment. The category would be too heterogeneous for health research.

—Would affect historical continuity of the data: Effect on the data for carrying out trust obligations toward American Indians and Alaskan Natives is unknown.

—Western Samoa is an independent nation and how to report could be a problem.

(3) Collect information on specific tribal affiliation and distinguish between Federally-recognized tribes and State-recognized tribes (Tribal affiliation is based on criteria established by the tribe, not self-identification.).

Pros of Option (d)(3):

• Tabulation and analysis: Meets Federal agency needs for policy development, trends analyses, needs assessments, and program evaluation and enforcement. A way to distinguish between legal and ancestral identification with the American Indian category.

Cons of Option (d)(3):

• Collection: Respondents may not know the difference between Federally-recognized and State-recognized tribes.

• Tabulation and analysis:

—State-recognized tribal affiliation is not required for Federal purposes.

—Small numbers for most tribes would not provide meaningful statistics in surveys.

Past research results/literature review: Of persons reporting as ''American Indian'' in the 1990 census, 13 percent did not specify a tribe; this was an improvement from the 1980 census results. There was higher than expected growth rate of American Indians from 1980 to 1990 (as well as from 1970 to 1980) which raises questions about what the census race question is measuring for this population. Some of the change is attributed to growth and improvements in the census and outreach programs, some to misreporting (for example, some Asian Indian parents reported their children as American Indian), and some to shifts in self-identification from White to American Indian. The quality of the data for the American Indian population is of concern since it is a relatively small population (about 2 million in 1990) and the data are used to disburse Federal program funds to American Indian tribal and Alaska Native Village governments. About 2 million persons said they were American Indian in the race question of the 1990 census; however, 8.7 million included American Indian in their response to the ancestry question.

(e) Multiracial

How to classify persons who identify with more than one race is perhaps the issue that has engendered the most controversy in the present review. For the most part, the public comment used the term, ''multiracial'' to refer to persons of two or more races. A variety of options were suggested in public comment for how to collect racial data from multiracial persons. They are shown below, followed by pros and cons cited for each option. Table 1 summarizes the options. This summary reports only on options proposed during public hearings and in the public comment period. It also highlights pros and cons for these options as raised in public comment or shown by research. Inclusion in the summary does not reflect OMB endorsement of the comments or suggestions.

In Latin America, a racially mixed society, there is an array of terms to describe gradations of skin color. This has not been the history of the United States in this century where the terminology implies ''pure'' races such as White or Black, rather than biracial or multiracial categories. In 1960, there were about 150,000 interracial marriages compared with 1.5 million in 1990. In the 1990 census, about 4 percent of couples reported they were of different races or one was of Hispanic origin. Such households had about 4 million children.

Directive No. 15 says that persons of mixed racial and ethnic origins should use the single category which most closely reflects the individual's recognition in his or her community. The public comments indicate that multiracial persons objected to this instruction. The commenters indicate that a single category does not reflect how they think of themselves. From their perspective, the instruction requires them to deny their full heritage and to choose between their parents. They feel they are being required to provide factually false information. They maintain that the current categories do not recognize their existence. They say they could mark ''Other'' where that category is provided but they feel it is demeaning. They want to identify their multiple races, but say that those who prefer to choose one of the existing broad categories could do so.

One concern of those who oppose a category for multiracial persons is that it will reduce the count for persons in the basic categories. Organizations representing multiracial persons disagree. They say minority groups could gain numbers as some persons are now classified as ''White'' under the ''choose one'' rule. As reflected in the options listed below, there was disagreement as to whether identification should include specific races. If specific races are identified, there might be some flexibility in how users could tabulate data. For some, this is seen as an advantage. For others, it is seen as a disadvantage because different tabulation rules would result in different counts of groups.

Some asked how far back in one's ancestry respondents should go in deciding to identify multiple races. Most who commented meant only the race or Hispanic origin of parents. This would require additional instructions and may not be acceptable to those who wish to identify their earlier ancestry. Presumably, persons would be instructed to list all races if the parent(s) were also of multiple races; this concerned those who oppose a multiracial category.

The discussion below refers to ''race'' but some respondents suggested multiple ''ancestry'' (listing both parents) should be the focus instead. Asking about ancestry focuses the questions back in time and conveys an historical and geographic context which some feel is clearer than the ambiguity of ''race'' or ''ethnicity.''

Table 1. Summary of Options for Identification of Multiracial Persons

(e)(1) Multiracial identification not allowed (must pick one broad category):
- (aa) Individual chooses the one with which he or she most closely identifies
- (bb) Mother's category is designated
- (cc) Father's category is designated
- (dd) Race of minority-designated parent (if one is White)

(e)(2) Multiracial identification allowed:
- (aa) ''Multiracial'' category—self-identification (SI) or observer identification (OI)
- (bb) ''Mark all that apply'' from list of specific categories—SI only
- (cc) Open-ended question—SI or OI
- (dd) ''Other''—SI only
- (ee) Mother's and father's geographic ancestry—SI only
- (ff) Skin-color gradient chart—SI or OI

Options Suggested in Public Comments

Option (e)(1): Mark one broad category with which the respondent

most closely identifies (categories are same or similar to current list)

Pros to Option (e)(1)—mark one broad category:

• Collection:

—Physical space on forms and questionnaires same as now.

—Identification: Most people identify with only one of the current categories; facilitates collection by observers where that method is used; persons of multiracial heritage who identify with one broad category do not have difficulty responding.

—Telephone survey: Easy to ask.

• Tabulations and analysis:

—Easier than options that allow the identification of multiple races.

—Meets needs of Federal agencies concerned with program evaluation and civil rights monitoring and enforcement.

—This is the only option that meets the needs of the Indian Health Service which is responsible for health care of anyone who is a Federally-recognized American Indian or Alaskan Native, regardless of the proportion of Indian blood or which parent has Indian blood.

—Maintains historical continuity of data.

—Categories are the same or similar to those used in State and local administrative records and historical Federal administrative records.

—Federal laws are written based on the assumption that people identify with one Directive No. 15 category. For civil rights monitoring and enforcement, respondents clearly fall in or out of a particular category. Would address concerns of those who believe a ''multiracial'' category would compromise effective implementation of civil rights laws.

Cons to Option (e)(1)—mark one broad category:

• Collection—identification and count issues:

—Having to choose one racial category upsets some respondents, especially those with immediate multiracial heritage, who identify with more than one race/ethnicity; telephone interviewers ask race in early part of interview and then must deal with an unhappy respondent for the remainder of the questions; and Federal agencies must respond to those upset by the policy.

—Nonresponse rates may increase for persons who wish to identify with more than one race but who are instructed to select the one category with which they most closely identify.

—As the size of the Hispanic population increases, a larger number and proportion of that population group may mark ''Other'' or not respond. The 1994 pretest of the Survey of Income and Program Participation showed some Hispanics would report in the multiracial category.

—Inconsistencies: The same person is likely to be identified differently across administrative records and surveys which reduces analytic usefulness of the data. If mother's race is used to assign the child's race as in birth records, the classifications may be different than the person's self-identification.

—There is a significant number of interracial marriages among Asians and Whites. For example, in the 1990 census, in California, nearly one-fourth of children with any Asian background were White and Asian. Asian groups contend they are undercounted when forced to identify with one category only. One study of the 1990 census indicates that the children of these marriages are more likely to identify themselves as ''White'' than as ''Asian.''

• Tabulations: Option (e)(1)(dd), in which the race of the minority-designated parent is designated as the person's category, requires additional rules if one parent is not White.

• Analysis:

—Does not sufficiently reflect Nation's diversity; no information for multiracial persons about differences in health, economic status, and likelihood of discrimination.

—Not as useful in health research as identification of the specific mixtures. All of the current racial categories are said to be too broad for analysis of health risks and economic trends; for example, a study found that 25 percent of those in the ''Asian or Pacific Islander'' category smoked, but this ranged from 20 percent of Filipinos to 72 percent of Laotians.

Option (e)(2)(aa): ''Multiracial'' category (SI or OI)

(Note: May ask respondent to specify races but not necessarily)

Pros to Option (e)(2)(aa)—''Multiracial'' category:

• Collection if specific races are *not* identified:

—Physical space on forms: adds one racial category.

—Meets demand of some multiracial respondents, especially those whose parents are of different races.

—Telephone survey: Easy to ask if it is the only category added; however, if additional categories are added may be problematic.

—Somewhat more amenable to identification by observers than any other option for multiracial persons (however, compared with observer identification in Option (e)(1), this option is likely to result in an undercount and a substantially different distribution of current broad categories).

• Tabulation and analysis:

—A few States have passed laws to include this category in their administrative records. Currently they proportion their multiracial counts among the OMB categories for Federal reporting purposes based on percentages of minorities in the general population, although it is not clear what geographic level they are using (National, State, local, school districts, etc.) when they refer to ''general population.'' A change by OMB to a ''multiracial'' category would reduce costs for these few States because they would not have to maintain data in two different ways.

—Indication of population diversity.

—Potentially useful in analyzing trends such as education and employment, especially if specific categories are identified.

Cons to Option (e)(2)(aa)—''Multiracial'' category:

• Collection:

—Requires testing for effect on respondents, response rates, and data quality. Multiracial persons who previously identified principally with one broad category may become unsure of what is being asked. Multi-ethnic persons of the same race (e.g., a White person of English and German descent) may find the questions confusing. It is not clear how multiracial Hispanics would answer.

—The category is imprecise and specific instructions would be required on whether respondents should answer in terms of the races of their parents only or further back. Imprecision of the category leads to possible confusion since, if one goes back far enough, many Americans are of mixed racial heritage (for example, many Whites have American Indian heritage and many Blacks have African, White, and American Indian heritage).

—Have to determine an acceptable category name. Suggestions included: Multiple races; Mixed race; Multiracial; Tan American; TIRAH (Tan InterRacial American Humankind); Mixed origins; Mestee; More than one race; and Mulatto. Some of these suggestions apply only to Black and White mixtures. Cognitive research shows that most

people understand the terms, ''multiracial'' and ''biracial.''

—Requires establishment of a category (and the associated extra costs) but the category may be used by only a small proportion of the population. Some school systems allow use of a ''multiracial'' category and report it is used by less than 2 percent of students.

—Where identification is by an observer: Unknown what criteria an observer would use to identify persons of more than one race; identification of specific races unlikely or too inaccurate to be useful; because of likely mismatch, unclear how it would affect a count of mixed race persons; broad category of blood relatives likely to be identified differently, especially in administrative records; and the same person is likely to be identified differently across administrative records and surveys which reduces the analytic usefulness of the category.

• Tabulations and analysis:

—The category is not an alternative in the administrative records of many State and local governments.

—If specific races are identified through an open-ended question, the development of a classification system for tabulating responses would be required; choices may be controversial and challenged.

—If specific races are not indicated, the general category is too heterogeneous for meaningful analysis or for use in civil rights monitoring and enforcement. A heterogeneous category does not provide sufficient information for health researchers (disease risk specific to racial and ethnic groups, monitoring of historical trends) and would complicate the design, conduct, and evaluation of health intervention programs. It is unclear how such a heterogeneous category could be used in civil rights monitoring and enforcement and such efforts could be more difficult and costly.

—There would be a major effect on historical continuity if specific races are not indicated because it may reduce the count of the current broad categories and in unknown ways. Some expressed concern that if specific races are not known, the category has the potential for increasing racial segregation, discrimination, and the stigmatization of broad categories (other than White) which may result in less effective enforcement of civil rights laws.

—Persons with the same general cultural heritage and with similar physical characteristics may be classified differently.

Option (e)(2)(bb): ''Mark all that apply'' (SI only)

Pros of Option (e)(2)(bb)—Mark All That Apply

• Collection:

—If no new categories are added, physical space on forms and questionnaires same as now.

—Meets desire for self-identification of many multiracial respondents.

• Tabulation and analysis:

—Detail allows flexibility. Indicates extent and makeup of Nation's diversity.

—Can maintain some historical continuity by aggregating specific categories into current broad categories (for example, a person who has one Black parent and one White parent could be tabulated, depending on the purposes of the data, in three ways: White, Black, or Black/White). See related discussion below under ''cons.''

—Decision rules about aggregations of detailed categories could be discussed and documented. Currently, we do not know what basis multiracial people use for marking their specific identity as a broad category.

—Provides potentially useful subgroup information for health researchers in terms of race-specific diseases, especially if the race of each parent is identified. For example, one study found a difference in the probability of low birth weight between Black mother-White father and White mother-Black father populations; small-for-gestational-age rates and preterm delivery rates also vary by race of the mother.

Cons of Option (e)(2)(bb)—Mark All That Apply

• Collection:

—Telephone survey: Difficult and may negatively affect data quality.

—In personal interviews, must use a flash card (can list responses on control card if survey will be done by telephone later); tedious in large households.

• Tabulations and analysis:

—Complex because of the many possible combinations. Historical continuity of counts and characteristics would be problematic. In the 1980 and 1990 censuses, for example, race was reported as ''Black'' for two-thirds of children in families with one Black parent and one White parent present. For families with a White parent and an Asian or Pacific Islander (API) parent, the proportion of children whose race was reported as ''API'' versus ''White'' was different in the last two censuses. Allocation rules would be controversial even if the objective is to achieve historical continuity to the extent possible (especially for characteristics).

—Aggregation decision rules would be required and may be subject to controversy.

—Current Federal laws are premised on persons identifying with one racial group. It is not clear what the impact would be for persons identifying as multiracial.

Option (e)(2)(cc): Open-Ended Question (SI or OI) (Allows Multiple Responses)

Pros of Option (e)(2)(cc)—Open-Ended Question

• Collection:

—Physical space on questionnaire/forms less than currently.

—Telephone survey: easy to ask if it is the only category added; however, if additional categories are added may be problematic.

—Meets desire for self-identification of many multiracial respondents, those who want to answer ''American,'' and persons from small national-origin groups. Respondents likely to be satisfied since they are not restricted by pre-defined categories. One study of an open-ended question showed only 13 percent of Hispanic respondents used the conventional racial designations of ''White'' or ''Black.'' For these Hispanics, self-identification was based more on cultural and ethnic identity. In the 1990 census, about 90 percent of the population reported an ancestry in the open-ended question; only 0.7 percent were uncodable responses; but about 10 percent did not respond to the question.

• Tabulations and analysis:

—Detail allows maximum flexibility and provides sociologically rich information for analyzing trends. Provides subgroup information useful to health researchers in terms of race-specific disease risk.

—Can maintain some historical continuity by aggregating specific categories into broad categories in 1977 Directive No. 15 (except see cons below and under (e)(2)(bb), ''tabulations and analysis'').

—Does not require respondent to indicate a preferred race; if desired, the tabulation rules can imply a priority by following the order of responses. Cons of Option (e)(2)(cc)—open-ended question:

• Collection:

—Unlikely States would collect data this way for their administrative records and thus, there would likely be a mismatch among data sets (also negative effect on analysis when trying to compare results among data sets).
—Same person likely to be identified differently across administrative records and surveys which reduces analytic usefulness.
—Does not allow for observer identification.

Tabulations and analysis:

—Must develop a classification system to categorize hundreds of possible responses and the choices can be controversial. See discussion above in (e)(2)(bb) under cons, ''tabulations and analysis.''
—Negative effect on counts of broad categories and data quality, including considerations listed below:

(1) Religions given as responses cannot be tabulated into a broad category. This generates complaints (because of separation of church and state, religions cannot be tabulated by government agencies) and increases the effective nonresponse rate.

(2) National origins or nationalities are likely answers. Data collection agencies would have to code to broad categories based on probability (e.g., ''English'' likely to be White but could be Black or Asian also).

(3)''American'' is a frequent response (the 6th ranked group in the 1990 census ancestry question with 12.4 million such responses or 5 percent of all responses) and cannot be coded to a broad category (effectively increases nonresponse rate). Foreign born and non-English speakers showed greater difficulty with open-ended write-in questions such as the 1990 census ancestry question.

—Negative effect on data quality: Citing examples is interpreted as influencing respondents and giving no examples can also have significant effect on counts of broad categories. Research from the 1980 and 1990 censuses indicates high levels of inconsistent responses to open-ended questions and strong ''example'' effects. For instance, from 1980 to 1990, the number of Cajuns, which was an example in the ancestry question in 1990 but not in 1980, grew from 30,000 to 600,000. French, which was dropped as an example in 1990, declined from 13 million to 10 million.
—It is sometimes hard to interpret what respondents intend by their responses.

Option (e)(2)(dd): ''Other—specify'' (SI) at end of list of broad categories

Pros of Option (e)(2)(dd)—''Other'':

- Collection:

—Does not take up much physical space on the questionnaire.
—Telephone survey: Easy to ask if it is the only category added; however, if additional categories are added may be problematic.
—Identification issues: Respondents likely to find it easier to express their identity since they are not restricted to only the pre-defined categories (for example, those who want to answer ''American'' can do so); can ask multiracial respondents to choose one racial category but if they refuse, they can specify all the categories they choose; and allows identification of multiple and single categories not listed elsewhere (e.g., Indians of South and Central American background).

- Tabulations and analysis:

—Detail allows maximum flexibility and provides sociologically rich information for analyzing trends. Potentially provides subgroup information useful to health researchers in terms of race-specific disease risk.
—Can maintain historical continuity by aggregating specific categories; however, see discussion in (e)(2)(bb) under cons, ''tabulations and analysis.''

Cons of Option (e)(2)(dd)—''Other'':

- Collection:

—Some people are offended by identification as ''Other''; when this proposal was made by OMB in 1988, it was not widely accepted and so was not adopted.
—Same person likely to be identified differently across administrative records and surveys which reduces analytic usefulness.
—If ''Hispanic'' is not listed as a separate category, research shows an extremely high percentage of ''Other'' responses are Hispanics who do not identify with one of the listed race categories.

- Tabulations and analysis:

—Must develop a classification system to categorize hundreds of possible responses and the choices can be controversial. See discussion in (e)(2)(bb) under cons, ''tabulations and analysis.''
—Detailed information not needed for program evaluation or civil rights monitoring and enforcement.
—If specific responses are not coded, the category is too heterogeneous to be useful.
—Negative effects on counts of broad categories and data quality, including considerations listed below:

(1) Religions given as responses cannot be tabulated into a broad category. This generates complaints (because of separation of church and state, religions cannot be tabulated by government agencies) and increases the effective nonresponse rate.

(2) National origins or nationalities are likely answers. Data collection agencies would have to code to broad categories based on probability (e.g., ''English'' likely to be White but could be Black or Asian also).

(3) ''American'' is a frequent response (the 6th ranked group in the 1990 census ancestry question with 12.4 million such responses or 5 percent of all responses) and cannot be coded to a broad category (effectively increases nonresponse rate).

—Negative effect on data quality: Citing examples is interpreted as influencing respondents and giving no examples can also have significant effect on counts of broad categories.
—It is sometimes hard to interpret what respondents intend by their responses.

Option (e)(2)(ee): Mother's and Father's Geographic Ancestry (SI only)
(Respondent would be given a numbered geographic list and mark the appropriate numbers to indicate the region of origin of ancestors who migrated to the United States)

Pros of Option (e)(2)(ee)—Geographic Ancestry

- Collection:

—No overlapping categories.
—One clear concept, geographic origin of ancestors. In the 1990 census ancestry question, virtually all of the responses were national origin rather than ethnic origin (e.g., ''Italian'' more often than ''Amalfi'' or ''Calabrian'').
—Telephone survey: Can do but not easily.

- Tabulations and analysis:

Geographic origin may be a better indicator of health differences than race for many people. Tabulations would be lengthy but not difficult.

Cons of Option (e)(2)(ee)—Geographic Ancestry

- Collection—identification issues:

—People who can mark their race may not know the geographic region of origin of their ancestors or parents (e.g., adoptees).

—Likely to be a high rate of error in the ''North America'' category (only American Indians could correctly mark this category but it is likely those born in the United States would also mark it).
—Same person likely to be identified differently across administrative records and surveys which reduces analytic usefulness.
—Many people have ancestors from several different geographic regions and reports are often inconsistent among data sets.

• Collection—physical space on forms: Considerably more than currently.

• Tabulation and analysis: Does not meet Federal program needs or provide historical continuity (for example, a person from Africa might be White or Black).

Option (e)(2)(ff): Skin-Color Gradient Chart (SI or OI)

This is a suggestion for a numbered chart, a scale of skin-tone colors, reproduced on forms. Respondents would check the skin-tone number closest to the color of the individual respondent.

Pros of Option (e)(2)(ff)—Skin Color Chart

• Collection: Less physical space on forms than now.

• Analysis:
—Can compare skin-tone responses with socioeconomic status and differences in effects of discrimination.
—A measure without racial labels less subject to changes in meaning over time as compared with labels based on race, ethnicity, and ancestry.

Cons of Option (e)(2)(ff)—Skin Color Chart

• Collection:
—Identification: Offensive to many; same person likely to be identified differently across administrative records and surveys which reduces analytic usefulness; individuals could change skin colors over a lifetime as a result of exposure to sunlight or disease.
—Telephone survey: Impossible.
—Costly: Requires precise, multicolor printing (color tones will vary among forms) when one-color (usually black) printing is now the case for most forms and questionnaires.

• Tabulation and analysis:
—No historical continuity; does not meet program needs.
—Skin color (melanin content) is not the sole way people identify their race and ethnicity. Culture, geography, and history, for example, are also considerations for many. For example, Black Africans and very dark Asian Indians may have similar skin tones but do not consider themselves in the same race category.
—Blood relatives may be coded differently.
—Not useful for health research or other types of socioeconomic research.

Past research results/literature review on a multiracial category: Some persons of mixed parentage or parents of interracial children who want to report more than one race are unsure how to respond. In the 1990 census, 98 percent of the population identified in one category; only 2 percent provided write-in multiple responses to the race question despite the instruction to mark one race only. Developing instructions for who should and who should not mark a ''multiracial'' category is difficult; in a 1994 pretest of the Census Bureau's redesigned Survey of Income and Program Participation, some persons thought they were being asked what race they would like to be if they could be multiracial even though their parents were from the same racial group.

(f) Hispanic Origin

Directive No. 15 defines Hispanic as a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race. There is significant confusion in public comment as to whether Spaniards, Portuguese, Brazilians, and American Indians with a mixed heritage of Mexican or Central or South American tribes are included in the category, ''Hispanic origin.'' Three major questions were raised. One is whether Hispanic origin should be a category in a single ''race/ethnicity'' question or whether there should be a question about Hispanic origin separate from race (discussed in Issue 3 above). The other two questions, on heterogeneity of the category and terminology, are discussed below. This summary reports only on options proposed during public hearings and in the public comment period. It also highlights pros and cons for these options as raised in public comment or shown by research. Inclusion in the summary does not reflect OMB endorsement of the comments or suggestions. Requests included:

Options Suggested in Public Comment

(1) Collect data for population subgroups of the ''Hispanic origin'' category.

Pros of Option (f)(1):

• Tabulation and analysis: The category, ''Hispanic origin,'' represents a heterogeneous population. Information on subgroups describes the significant social, economic, and health differences among the Puerto Rican, Mexican-American, Cuban, and other Hispanic populations.

Cons of Option (f)(1):

• Collection: Visual identification of nationality groups is difficult.

(2) Alternative or additional words suggested for ''Hispanic'' include ''Latino/Hispanic Origin,'' ''Latino,'' ''Latin,'' ''Latin American,'' and ''Hispanics from the Americas'' (to exclude persons from Spain and the Philippines). Persons of Mexican ancestry did not agree on terminology for their group. Some wanted ''Pre-Columbian'' because of their Mestizo (Indian) background. Others disagreed saying some Mexicans have European background. Some preferred the term, ''Chicano'' to identify Mexican-Americans while others found the term offensive.

Pros of Option (f)(2):

• Collection: Some respondents prefer an alternative.

Cons of Option (f)(2):

• Collection: The term, ''Latino,'' includes a diverse group of people from many national origins, races, and backgrounds. Some understand the term, ''Latin'' or ''Latino'' to include Europeans such as Italians, French, Portuguese, Romanians, and Spaniards. Cognitive research by the Census Bureau indicates some understand ''Latino'' as meaning from Latin America, ''Hispanic'' as meaning someone who speaks Spanish, and ''of Spanish origin'' as someone from Spain or with a distant relative who was Hispanic.

Past research results/literature review: Results from the 1990 census showed that the Hispanic population of some 22.4 million grew by 53 percent from 1980 to 1990. Immigration accounted for about half the growth. Overall, the Census Bureau considers the quality of census and survey data for Hispanic origin to be good. Nevertheless, evaluations show high nonresponse (10 percent; research shows most are not Hispanics) and misreporting (for example, some non-Hispanics report in the ''Mexican-Amer.'' category to indicate they are American). In the 1990 census race question, two in three persons who did not mark a race circle, wrote in a response reflecting Hispanic ethnicity. Among persons who indicated in the 1990 census that they were of Hispanic origin, 52 percent marked the ''White'' circle and 43 percent marked the ''Other race'' circle.

Based on evaluations of the 1980 Census and 1990 Census pretests, it appears that persons reporting ''Other Spanish/Hispanic,'' included Brazilians and other persons of Portuguese descent who feel the term, ''Hispanic,'' also applies to them.

C. Future Research Agenda

Agency staff and funding for research and testing associated with possible changes are very limited. As a result, plans necessarily have to be developed within those resource constraints and may change. Within available resources, Federal agencies are conducting research through 1996 to inform decisions on selected options. A brief summary of the future research agenda, as of April 1995, is presented in this section. The number of issues that can be tested in 1995 and 1996 is limited. This **Federal Register** notice provides the last opportunity for public comment on priorities for research in 1996.

Research Agenda

The Interagency Committee's Research Working Group, which is co-chaired by the Bureau of the Census and the Bureau of Labor Statistics, reviewed all the criticisms and suggestions for changing the current categories that appeared in OMB's June 9, 1994, **Federal Register** notice, including requests received during the public comment period to expand the standards by establishing additional categories for specific population groups. Some of the more significant issues that have been identified for research and testing are: classification of multiracial persons; combining race and Hispanic origin; combining concepts of race/ethnicity/ancestry; changing the names of current categories; and adding new classifications. The Race and Ethnic Targeted Test, to be conducted by the Bureau of the Census in 1996, will be the major opportunity to test three to four options on race and ethnicity.

The Bureau of Labor Statistics designed a Supplement to the May 1995 Current Population Survey (CPS) to provide information about three issues with respect to Directive No. 15. They are (1) what proportion of respondents will choose a ''multiracial'' category and how that may impact on the data for the other racial categories; (2) inclusion of an Hispanic category in the list of races; and (3) preferences concerning specific terms such as ''African American'' and ''Latino.'' To gather this information, the Supplement is divided into four panels, and a random sample of approximately 15,000 of the 60,000 CPS households will receive one of the following four survey instruments.

Panel 1: Separate race and Hispanic origin questions; no multiracial category

Panel 2: Separate race and Hispanic origin questions; with a multiracial category and races specified

Panel 3: A combined race and Hispanic origin question; no multiracial category

Panel 4: A combined race and Hispanic origin question; with a multiracial category and races specified

In addition, all households in the May Supplement will be asked questions about their ancestry, preferences concerning specific terms, and use of languages other than English in the home. The ancestry and language questions are included to help explain differences in reporting by households with similar racial characteristics. Results of this test are expected to be available in late Fall 1995.

Multiracial Category.—Research and testing of a multiracial category is especially important since it could have a significant impact on the usefulness of data resulting from the current racial and ethnic categories. An important aspect of this issue on which research needs to be conducted is the extent to which persons of mixed racial heritage will identify in a separate multiracial category on surveys and censuses.

To begin research on this issue, a multiracial response option was included in operational pretests for the revised Survey of Income and Program Participation involving 292 households in the Atlanta, Boston, and Chicago metropolitan areas during April and May 1994. Despite the small sample size, the results were somewhat informative for two reasons: (1) A higher percentage (7.3 percent) of persons reported in the multiracial category than have done so in some of the records from school and military systems cited in various public hearings and conferences, and (2) in nearly two-thirds (65 percent) of the 55 write-ins to the multiracial item, the respondent reported as Hispanic (23 cases or 42 percent) or as Hispanic and some other race group. The higher percentage reporting as multiracial might reflect the sites of the pretest and the oversampling of low and high income areas. The high proportion of multiracial responses involving Hispanics does indicate that a multiracial category might draw disproportionately more responses from Hispanics than from the other racially mixed persons for whom many were seeking this option. These results underscored the importance of testing the multiracial category in larger samples (as in the May 1995 CPS Supplement), as well as perhaps the need for additional definitions or instructions for the category if the intention is to draw responses primarily from persons whose parents are of different races. These early findings also served to indicate that cognitive research would aid in developing that Supplement.

In preparation for the May 1995 CPS Supplement, cognitive research interviews were conducted in 1994 and early 1995 with individuals who have parents of different races, as well as individuals who may identify with only one race, even though they may have a mixed heritage. The main objective of this cognitive research was to examine how individuals view race and ethnicity and how they might interpret and respond to a race question that provides a ''multiracial, specify'' option.

Combining Race and Hispanic Origin.—The May 1995 CPS Supplement will provide needed research on whether a combined race/Hispanic ethnicity question should be used instead of separate questions on race and Hispanic ethnicity. Important reasons to research this issue are that some Federal agencies have been collecting and reporting data in a combined format for a number of years, and a high percentage of Hispanics selected ''other race'' in the 1990 decennial census race question when race and ethnicity were collected in two separate questions. Research questions include examining the effects of having a single race and Hispanic ethnicity question on the counts for other races and for Hispanics; examining which subgroups to include as ''Hispanic''; determining what percentage of administrative record data bases already use ''Hispanic'' as a racial category and what percentage of respondents in these data bases are missing information on Hispanic ethnicity; and deciding if Hispanic ethnicity should be assumed to take priority over other racial categories (e.g., Black Hispanics).

In considering this issue, one should bear in mind that the concepts of race, ethnicity, and ancestry are not clearly or consistently distinguished in the U.S. population. For example, some Hispanics regard the ''Hispanic'' designation as a ''racial'' category, defining ''race'' in terms of national origin and cultural characteristics. As discussed below, it has been suggested, therefore, that census and survey respondents be asked about only a single concept—perhaps ethnicity or race/ethnicity—corresponding to self-perceived membership in population

groups that might define themselves by cultural heritage, language, physical appearance, behavior, or other characteristics.

Combining Concepts of Race/Ethnicity/Ancestry.—Directive No. 15 has been criticized for not clearly distinguishing among race, ethnicity, and ancestry. Directive No. 15 specifically notes the absence of anthropological or other scientific bases for their separate designation. Varied and possibly inconsistent definitional criteria, such as geographic origin, cultural origin, cultural identification and affiliation, community recognition, and race itself, are used to describe the terms.

The current Federal categories have created five single aggregations from heterogeneous and highly diverse populations. Since ethnic groups evolve and may change their group name over time, research is needed on the basic concepts to be measured as well as on the popular terminology respondents use to refer to their ethnic group. This research will be helpful in determining those response categories which would provide useful information about our Nation's population.

The research on this issue needs to consider a number of implications of combining the concepts. The consolidation of questions of ''race,'' ''ethnicity,'' and ''ancestry'' into a single question of ''ethnicity'' (or ''race/ethnicity'') or of ''identified population groups'' would eliminate the distinction between race and ethnicity indicated in Directive No. 15. Consolidation of the categories would also address the issue of including Hispanics as a racial designation rather than as a separate ethnic category. Under consolidation, Hispanic would be included as an ethnic or racial/ethnic category along with other categories previously classified as races. If, in addition to consolidating categories, respondents are allowed to select more than one ethnic or racial/ethnic identity, the issue of ''multiracial'' identification might also be addressed. The combined question would most likely solicit multi-ethnic as well as multiracial responses. In the 1990 census ancestry question, which allows multiple reporting of ethnicities, about 30 percent of the population reported multiple ancestries. Such a large proportion of multiple responses would present processing problems for Federal agencies. The consolidation of race and ethnicity would interrupt the continuity of categorization in the race and ethnicity questions in recent decades; however, continuity is already imperfect due to changes in questions and response options.

Terminology for Categories.—This issue is concerned with whether to replace or revise current terminology for Black, Hispanic, or American Indian racial/ethnic categories for data collection and data reporting with terms that have been suggested such as African American, Latino/Latina, and Native American. Research is needed to determine whether, and in what ways, any proposed changes in terminology may affect reporting or data collection. If a change in terms produces a change in coverage, it is useful to know what that change signifies. Any replacement of terminology should consider: (1) That the new terms might have meanings different from the old terms for respondents while, for the users, the old and new categories might appear synonymous; (2) that as current usage changes, terms are likely to have different meanings to people, and the new terms may exclude persons who were comfortable with the old terms but who may not perceive themselves as ''fitting'' under the new designation; and (3) the extent to which definitions need to accompany new categories. Questions about preferences for various terms are included on the May 1995 CPS supplement.

Additional research plans:

- The Census Bureau is conducting cognitive research from February through July 1995 on issues such as a multiracial category, marking all categories that apply, terminology, and a combined race/Hispanic origin/ancestry question. Research on the classification of ''Native Hawaiian'' is also planned. The extent of research is dependent upon available resources. The Census Bureau also plans to conduct two tests in 1996: the National Content Test (NCT) and the Race and Ethnic Targeted Test (RAETT). The NCT is designed to test selected population and housing questions for the 2000 census. It will be a national sample of 35,000 to 50,000 households. To determine what information respondents will provide in a self-reporting context, the Census Bureau has identified a multiracial category or response option (for example, multiple responses) as a high priority for panels on the 1996 National Content Test. Other issues to be tested in the NCT include terminology and the placement of the Hispanic origin question first, followed immediately by the race question. The RAETT, which will include a reinterview, will provide the most extensive opportunity to test several options for collecting racial and ethnic data. The proposed sample of about 90,000 households will be targeted to a diverse sample of racial and ethnic populations. The Census Bureau expects that the RAETT will allow further testing of a multiracial classification, terminology, and other selected options.
- The National Center for Health Statistics and the Office of the Assistant Secretary for Health will conduct research on the effects of changes in racial classification on birth certificate records.
- The Centers for Disease Control and Prevention is undertaking a project to evaluate the recording of racial classifications on death certificates. This study will involve a survey of a sample of funeral directors with the aim of improving the quality of racial data reported on death certificates.
- A literature search on work related to racial classification in the health field (using MEDLINE) is being conducted by the Department of Health and Human Services (DHHS).
- An inventory of DHHS minority health data bases is being developed by the DHHS. It will provide information on what data are available and data collection problems that have been encountered.
- The National Center for Education Statistics (NCES) is conducting a Spring 1995 survey to obtain information: (a) How schools currently students' collect racial and ethnic data; (b) how administrative records containing racial and ethnic data are maintained and reported; (c) what State laws mandate or require of school systems with respect to collecting data on race and ethnicity; and (d) current issues in schools regarding race and ethnicity categories.

D. General Principles for the Review of the Racial and Ethnic Categories

The criticisms and suggestions for changing Directive No. 15 have underscored the importance of having a set of general principles to govern the current review process. The following principles were drafted in cooperation with Federal agencies serving on the Interagency Committee. The principles listed below are those OMB *may* use to guide final decisions on standards for the classification of racial and ethnic data. The principles are, for the most part, the same as those published in the June 9, 1994, **Federal Register** notice. There are changes to Principles 2, 5, 6, and 8. Principles 12 and 13 are new. The public is invited to comment on these or suggest additional principles.

1. The racial and ethnic categories set forth in the standard should not be interpreted as being primarily biological or genetic in reference. Race and

ethnicity may be thought of in terms of social and cultural characteristics as well as ancestry.

2. Respect for individual dignity should guide the processes and methods for collecting data on race and ethnicity; ideally, respondent self-identification should be facilitated to the greatest extent possible, recognizing that in some data collection systems observer identification is more practical.

3. To the extent practicable, the concepts and terminology should reflect clear and generally understood definitions that can achieve broad public acceptance. To assure they are reliable, meaningful, and understood by respondents and observers, the racial and ethnic categories set forth in the standard should be developed using appropriate scientific methodologies, including the social sciences.

4. The racial and ethnic categories should be comprehensive in coverage and produce compatible, nonduplicated, exchangeable data across Federal agencies.

5. Foremost consideration should be given to data aggregations by race and ethnicity that are useful for statistical analysis and program administration and assessment, bearing in mind that the standards are not intended to be used to establish eligibility for participation in any Federal program.

6. The standards should be developed to meet, at a minimum, Federal legislative and programmatic requirements. Consideration should also be given to needs at the State and local government levels, including American Indian tribal and Alaska Native village governments, as well as to general societal needs for these data.

7. The categories should set forth a minimum standard; additional categories should be permitted provided they can be aggregated to the standard categories. The number of standard categories should be kept to a manageable size, as determined by statistical concerns and data needs.

8. A revised set of categories should be operationally feasible in terms of burden placed upon respondents; public and private costs to implement the revisions should be a factor in the decision.

9. Any changes in the categories should be based on sound methodological research and should include evaluations of the impact of any changes not only on the usefulness of the resulting data but also on the comparability of any new categories with the existing ones.

10. Any revision to the categories should provide for a crosswalk at the time of adoption between the old and the new categories so that historical data series can be statistically adjusted and comparisons can be made.

11. Because of the many and varied needs and strong interdependence of Federal agencies for racial and ethnic data, any changes to the existing categories should be the product of an interagency collaborative effort.

12. Time will be allowed to phase in any new categories. Agencies will not be required to update historical records.

13. The new directive should be applicable throughout the U.S. Federal statistical system. The standard or standards must be usable for the decennial census, current surveys, and administrative records, including those using observer identification.

The agencies recognize that these principles may in some cases represent competing goals for the standard. Through the review process, it will be necessary to balance statistical issues, needs for data, and social concerns. The application of these principles to guide the review and possible revision of the standard ultimately should result in consistent, publicly accepted data on race and ethnicity that will meet the needs of the government and the public while recognizing the diversity of the population and respecting the individual's dignity.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

Appendix

Directive No. 15

Race and Ethnic Standards for Federal Statistics and Administrative Reporting

As adopted on May 12, 1977.

This Directive provides standard classifications for recordkeeping, collection, and presentation of data on race and ethnicity in Federal program administrative reporting and statistical activities. These classifications should not be interpreted as being scientific or anthropological in nature, nor should they be viewed as determinants of eligibility for participation in any Federal program. They have been developed in response to needs expressed by both the executive branch and the Congress to provide for the collection and use of compatible, nonduplicated, exchangeable racial and ethnic data by Federal agencies.

1. Definitions

The basic racial and ethnic categories for Federal statistics and program administrative reporting are defined as follows:

a. *American Indian or Alaskan Native.* A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliations or community recognition.

b. *Asian or Pacific Islander.* A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

c. *Black.* A person having origins in any of the black racial groups of Africa.

d. *Hispanic.* A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

e. *White.* A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

2. Utilization for Recordkeeping and Reporting

To provide flexibility, it is preferable to collect data on race and ethnicity separately. If separate race and ethnic categories are used, the minimum designations are:

a. *Race:*

—American Indian or Alaskan Native
—Asian or Pacific Islander
—Black
—White

b. *Ethnicity:*

—Hispanic origin
—Not of Hispanic origin

When race and ethnicity are collected separately, the number of White and Black persons who are Hispanic must be identifiable, and capable of being reported in that category.

If a combined format is used to collect racial and ethnic data, the minimum acceptable categories are:

American Indian or Alaskan Native
Asian or Pacific Islander
Black, not of Hispanic origin
Hispanic
White, not of Hispanic origin.

The category which most closely reflects the individual's recognition in his community should be used for purposes of reporting on persons who are of mixed racial and/or ethnic origins.

In no case should the provisions of this Directive be construed to limit the collection of data to the categories described above. However, any reporting required which uses more detail shall be organized in such a way that the additional categories can be aggregated into these basic racial/ethnic categories.

The minimum standard collection categories shall be utilized for reporting as follows:

a. *Civil rights compliance reporting.* The categories specified above will be used by all agencies in either the separate or combined format for civil rights compliance reporting and equal employment reporting for both the public and private sectors and for all levels of government. Any variation requiring less detailed data or data which cannot be aggregated into the basic categories will have to be specifically approved by the Office of Management and Budget (OMB) for executive agencies. More detailed reporting which can be aggregated to the basic categories may be used at the agencies' discretion.

b. *General program administrative and grant reporting.* Whenever an agency subject to this Directive issues new or revised administrative reporting or recordkeeping

requirements which include racial or ethnic data, the agency will use the race/ethnic categories described above. A variance can be specifically requested from OMB, but such a variance will be granted only if the agency can demonstrate that it is not reasonable for the primary reporter to determine the racial or ethnic background in terms of the specified categories, and that such determination is not critical to the administration of the program in question, or if the specific program is directed to only one or a limited number of race/ethnic groups, e.g., Indian tribal activities.

c. *Statistical reporting.* The categories described in this Directive will be used at a minimum for federally sponsored statistical data collection where race and/or ethnicity is required, except when: The collection involves a sample of such size that the data on the smaller categories would be unreliable, or when the collection effort focuses on a specific racial or ethnic group. A repetitive survey shall be deemed to have an adequate sample size if the racial and ethnic data can be reliably aggregated on a biennial basis. Any other variation will have to be specifically authorized by OMB through the reports clearance process. In those cases where the data collection is not subject to the reports clearance process, a direct request for a variance should be made to OMB.

3. Effective Date

The provisions of this Directive are effective immediately for all *new* and *revised* recordkeeping or reporting requirements containing racial and/or ethnic information. All *existing* recordkeeping or reporting requirements shall be made consistent with this Directive at the time they are submitted for extension, or not later than January 1, 1980.

4. Presentation of Race/Ethnic Data

Displays of racial and ethnic compliance and statistical data will use the category designations listed above. The designation ''nonwhite'' is not acceptable for use in the presentation of Federal Government data. It is not to be used in any publication of compliance or statistical data or in the text of any compliance or statistical report.

In cases where the above designations are considered inappropriate for presentation of statistical data on particular programs or for particular regional areas, the sponsoring agency may use:

(1) The designations ''Black and Other Races'' or ''All Other Races,'' as collective descriptions of minority races when the most summary distinction between the majority and minority races is appropriate;

(2) The designations ''White,'' ''Black,'' and ''All Other Races'' when the distinction among the majority race, the principal minority race and other races is appropriate; or

(3) The designation of a particular minority race or races, and the inclusion of ''Whites'' with ''All Other Races,'' if such a collective description is appropriate.

In displaying detailed information which represents a combination of race and ethnicity, the description of the data being displayed must clearly indicate that both bases of classification are being used.

When the primary focus of a statistical report is on two or more specific identifiable groups in the population, one or more of which is racial or ethnic, it is acceptable to display data for each of the particular groups separately and to describe data relating to the remainder of the population by an appropriate collective description.

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August 28, 1995

Part VII

Department of Education

34 CFR Part 98

Protection of Pupil Rights; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 98

RIN 1880–AA66

Protection of Pupil Rights

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations to implement the Pupil Protection Rights Amendments of 1994 (PPRA) to the Protection of Pupil Rights provision contained in the General Education Provisions Act (GEPA). PPRA was amended in the Goals 2000: Educate America Act (Pub. L. 103–227). The proposed regulations rename and revise the current regulations (34 CFR part 98 ''Student Rights in Research, Experimental Activities, and Testing'') for the Protection of Pupil Rights to implement these statutory changes and to make other changes that are necessary for proper program operation.

DATES: Comments must be received on or before October 27, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to LeRoy Rooker, U.S. Department of Education, 600 Independence Avenue SW., room 1366, Washington, DC 20202–4605. Comments may also be sent through Internet to ''PPRA—Comments@ed.gov.''

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the *Paperwork Reduction Act of 1980* section of this preamble.

FOR FURTHER INFORMATION CONTACT: Ellen Campbell, U.S. Department of Education, 600 Independence Avenue, SW., room 1366, Washington, DC 20202–4605. Telephone: (202) 260–3887. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These proposed regulations have been reviewed and revised in accordance with the Department's ''Principles for Regulating,'' which were developed to ensure that the Department regulates in the most flexible, most equitable, and least burdensome way possible. These principles advance the regulatory reinvention and customer service objectives of the Administration's National Performance Review II and are essential to an effective partnership with states and localities. The Secretary proposes these regulations because he believes they are necessary to implement the law and give the greatest flexibility to local governments and schools. In addition, the regulations minimize burden while retaining parents' and students' rights.

The Secretary interprets the Protection of Pupil Rights provision, as amended, contained in section 445 of the General Education Provisions Act (GEPA) to provide parents with the right to have access to surveys, analyses, or evaluations (surveys) administered by a State educational agency (SEA), local educational agency (LEA), or other recipient that asks a student to reveal information concerning the areas specified in section 445(b) of GEPA. In addition, parents or the student, if a student is an adult or an emancipated minor, must consent before a student is required to submit to a survey that asks a student to reveal information concerning these areas. Finally, parents or the student, if a student is an adult or an emancipated minor, must be notified of these rights and may file a complaint for alleged violations of these rights.

Summary of Major Provisions

The following is a summary of the regulatory provisions the Secretary proposes as necessary to implement the statute, such as interpretations of statutory text or standards and procedures for the operation of the program. The summary does not address provisions that merely restate statutory language. The Secretary is not authorized to change statutory requirements. Commenters are requested to direct their comments to the regulatory provisions that would implement the statute.

Section 98.1 Applicable Program

The Protection of Pupil Rights provision contained in GEPA applies to any program that is an ''applicable program'' under section 400(c)(1) of GEPA. Under this section the term ''applicable program'' means any program for which the Secretary or the Department has administrative responsibility as provided by law or by delegation of authority pursuant to law. The term includes each program for which the Secretary or the Department has administrative responsibility under the Department of Education Organization Act (DEOA) or under Federal law effective after May 4, 1980.

Section 98.2 Purpose

The Secretary interprets section 445 of GEPA to provide four general rights: (1) Parental right of access to certain surveys and the instructional material used in connection with these surveys of a student; (2) parental or student right to consent before a student is required to submit to certain surveys; (3) parental or student right to file a complaint for alleged violations of their rights under the law; and (4) parental or student right to receive effective notice of these rights. The Secretary would implement each of these rights in the proposed regulations.

Section 98.3 Definitions

The Secretary proposes to define ''recipient'' to include (1) a contractor who receives financial assistance directly from the Department to carry out the project and (2) the Department. This definition clarifies that any survey that the Department directly contracts for or carries out itself would be subject to these regulations.

The Secretary proposes not to define the term ''survey'' because he believes the term is self-explanatory. The Secretary would welcome comment on whether the terms ''survey, analysis, or evaluation'' as used in section 445 of GEPA should be defined in regulations.

Sections 98.10, 98.20 Access and Consent

Section 445(a) of GEPA provides for the parental right of access to instructional materials that will be used in connection with any survey as part of any applicable program.

Section 445(b) of GEPA provides for the parent's, in the case of an unemancipated minor, and student's, if the student is an adult or emancipated minor, right of consent to submit to a survey that reveals information concerning one or more of the areas specified in the statute (also listed in § 98.4(a)(2)).

The Secretary interprets the statutory provisions on access and consent to be read together; this interpretation would require an SEA, LEA, or other recipient of program funds from the Department of Education to make available for inspection by a parent or guardian only those surveys (and instructional material in connection with a survey) concerning one or more of the areas listed in section 445(b) of GEPA. Because, unlike the Family Educational Rights and Privacy Act (FERPA), this statute makes no specific reference applying the access and consent provisions to post-secondary institutions and the legislative history supports only applying these provisions to elementary and secondary school students, these proposed regulations will only apply to surveys administered in elementary and secondary schools.

—*Access provision:* The Secretary would implement the access provision by requiring that an SEA, LEA, or other recipient that uses any type of program funds received from the Department, to develop or implement a survey must make available for inspection by a parent or guardian of a student a survey, and the instructional materials used in connection with the survey, if the survey (1) asks the student to reveal information concerning one or more of the areas listed in section 445(b) of GEPA; and (2) is administered in an elementary or secondary school.

—*Compliance with a request for access:* An SEA, LEA, or other recipient would be required to comply with a request to inspect a survey (and the instructional materials used in connection with the survey) without unnecessary delay and in no case more than 45 days after it has received the request. This requirement is consistent with FERPA. Also, the Secretary believes this requirement is a reasonable way to ensure a prompt response to a parent's request for access to these materials while not requiring an SEA, LEA, or other recipient to provide immediate access.

An SEA, LEA, or other recipient would not be required to provide parents with their own copy of a survey (and the instructional material used in connection with the survey). The Secretary believes that such a requirement would be unduly burdensome. The Secretary notes, however, that an SEA, LEA, or other recipient may wish to provide a copy of a survey in order to accommodate parents with disabilities.

—*Destruction of material:* An SEA, LEA, or other recipient would not be permitted to destroy any survey or the instructional material used in connection with the survey, if there is an outstanding request to inspect the material under § 94.10 of the regulations. The Secretary believes this provision is necessary to ensure that a parent's request for access is not frustrated.

—*Consent provision:* The Secretary would implement the consent provision by requiring an SEA, LEA, or other recipient to obtain the prior consent of the parent or guardian, or student, as appropriate, before a student is required to submit to the survey if the SEA, LEA, or other recipient (1) uses any type of program funds, received from the Department, to develop or implement a survey; (2) the survey is administered in an elementary or secondary school; and (3) requires a student to submit to a survey that asks the student to reveal information concerning one or more of the areas listed in section 445(b) of GEPA. The Secretary has not interpreted ''required'' as used in section 445(b) of GEPA. By not interpreting the word ''required'', the Secretary will not be imposing a single rule to address a myriad of situations. Recipients will make initial judgments in individual cases as to whether a survey is or has been ''required'' in the administration of their activities. In the event a complaint is filed with the Department, the Department will determine on a case-by-case basis in light of all the circumstances whether a student has been required to submit to a survey.

Section 445(b) of GEPA provides that if a student is an unemancipated minor, a parent or guardian of a student provides the consent. If a student is an adult or emancipated minor, the student provides the consent. An adult would be defined as an individual who has attained 18 years of age. An emancipated minor would be defined according to the definition under State law.

—*Obtaining consent:* To meet the requirements of prior consent an SEA, LEA, or other recipient must provide an opportunity for the student or parent or guardian of a student to review a general description or summary of the type of information found in section 445(b) that is included in the survey and to provide information to the parent or guardian on the right to inspect the materials before the student submits to the survey. Rather than prescribing in regulations a standard form of written consent for parents or guardians, the Secretary proposes to allow an SEA, LEA, or other recipient the flexibility to develop its own type of written consent. To provide guidance to SEAs, LEAs, and other recipients, the Department intends to develop a model consent form.

Section 98.30 LEA Notification

Section 445(c) of GEPA provides that educational agencies and institutions shall give parents and students effective notice of their rights. The Secretary would implement this provision by requiring each LEA to give effective notice to parents of students in attendance, and students currently in attendance, at the LEA of their rights under the regulations. The notice would state, at a minimum, that parents and students have the four rights listed in § 98.2. An LEA would have the option to include more information in the notice. With respect to frequency, an annual notification, for example, would constitute an effective notice.

Section 98.40 Family Policy Compliance Office and the Office of Administrative Law Judges Functions

Section 445(e) of GEPA requires the Secretary to establish or designate an office and review board within the Department to investigate, process, review, and adjudicate violations of the rights established under this section. The Secretary would designate the Family Policy Compliance Office (Office) to investigate, process, and review complaints of violations under the regulations and to provide technical assistance to ensure compliance with the regulations. The Secretary would designate the Office of Administrative Law Judges as having jurisdiction over proceedings to recover, withhold, and terminate funds and to conduct hearings to compel compliance through cease and desist orders.

Section 98.41 Conflict With State or Local Laws

If an SEA or LEA determines that it cannot comply with the requirements of these regulations due to a conflict with State or local laws, it would be required to notify the Office within 45 days, giving the text and citation of the conflicting law. This provision is consistent with the Family Educational Rights and Privacy regulations (34 CFR 99.61). The Secretary believes that, to the extent possible, these proposed regulations should parallel the regulations implementing the Federal Educational Rights and Privacy Act (FERPA) because both the protection of pupil rights legislation and FERPA were originally introduced together with a common purpose and, therefore, should be administered in a similar fashion.

Section 98.42 SEA or LEA Required Reports

Under the proposed regulations the Office may require an SEA or LEA to submit reports containing information necessary to resolve complaints under this part, including information regarding the source of funding for the survey, and to ensure that SEAs, LEAs, or other recipients are complying with the statute. This requirement is in the current regulations (34 CFR 98.6).

Sections 98.43, 98.44, 98.45 Complaint Procedures

The statute does not specify any procedures for filing or processing a

complaint. The regulations would allow a parent or student, as appropriate, to file a written complaint with the Office regarding an alleged violation under this part. This requirement is in the current regulations (34 CFR 98.7(a)).

The proposed regulations would clarify when a parent and student have a right to file a complaint. Also, the proposed regulations would require that a complaint contain specific allegations of fact giving reasonable cause to believe that a violation of this part has occurred. The Office would investigate each timely complaint to determine whether an SEA, LEA, or other recipient has failed to comply with the proposed regulations. These requirements are in 34 CFR 98.7(a) and (b), respectively, of the current regulations.

The proposed regulations clarify when a complaint would be timely and when the Office may extend the time limit. These provisions are consistent with the requirements in 34 CFR 99.64(c) and (d) of the FERPA regulations. Again, the Secretary believes that for the reasons already discussed, and to the extent possible, the proposed regulations should be consistent with the FERPA regulations.

—*Notice of complaint issued by the Office:* The Office notifies the complainant and the SEA, LEA, or other recipient in writing if it initiates an investigation of a complaint and notifies the complainant if it does not initiate an investigation of a complaint. The required content of the notice to the SEA, LEA, or other recipient is consistent with 34 CFR 98.8(a) and (b) of the current regulations. The Secretary believes this notification is necessary to keep the complainant properly informed of the status of his or her complaint.

Sections 98.46, 98.47 Enforcement Process

The statute does not prescribe any enforcement procedures except for the establishment or designation of an office and review board within the Department of Education to investigate, process, review and adjudicate violations of the rights established by section 445 of GEPA. Under the proposed regulations, the Office would review a complaint and response and may permit the parties to submit further written or oral arguments or information. Following its investigation, the Office would provide to the complainant and the SEA, LEA, or other recipient written notice of its findings and the basis for its findings. If the Office found that the SEA, LEA, or other recipient had not complied with these regulations, the notice would (1) include a statement of the specific steps that the SEA, LEA, or other recipient must take to comply; and (2) provide a reasonable period of time, given all the circumstances of the case, during which the SEA, LEA, or other recipient may comply voluntarily. This procedure is consistent with that in 34 CFR 98.9 of the current regulations.

If an SEA, LEA, or other recipient other than a contractor does not voluntarily comply with the proposed regulations, the Office may, in accordance with part D of GEPA, (1) withhold, recover, or terminate funds under 34 CFR 81.3; or (2) issue a complaint to compel compliance through a cease-and-desist order under 34 CFR 81.3. This is consistent with 34 CFR 98.10(a)(1) of the current regulations.

If a contractor does not voluntarily comply with the proposed regulations, the Office may direct the contracting officer to take an appropriate action authorized under the Federal Acquisition Regulation, including either (1) issuing a notice to suspend operations under 48 CFR 12.5; or (2) issuing a notice to terminate for default, either in whole or in part under 48 CFR 49.102.

If, after an investigation, the Secretary finds that an SEA, LEA, or other recipient has complied voluntarily with these regulations, the Secretary provides the complainant and the SEA or LEA written notice of the decision and the basis for the decision. These enforcement provisions are consistent with 34 CFR 98.10(b) of the current regulations.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary to administer this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1980.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 98.1 *To which programs do these regulations apply?*) (4) Is the description of the regulations in the ''Supplementary Information'' section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (room 5121, FOB–10B), Washington, DC 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small LEAs receiving Federal funds from the Department. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would

impose minimal requirements to ensure that LEAs comply with the pupil protection requirements in GEPA.

Paperwork Reduction Act of 1980

Section 98.30 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

SEAs, LEAs, and other recipients may be affected by these regulations. The Department needs and uses the information to ensure compliance with requirements in the Pupil Protection Rights in GEPA. Annual public reporting burden for this collection of information is estimated to be .25 hours per response for 15,713 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. This section highlights those issues already discussed in the preamble on which the Secretary would particularly like comment.

The Secretary has attempted to balance a number of interests by interpreting ''applicable program'' narrowly and applying these regulations only to surveys that are developed or implemented under Department programs. The Secretary believes that this interpretation balances the rights of parents and students under the statute with the interests of local governments and schools in minimal administrative burdens. The Secretary requests comments on this interpretation. The Secretary is trying to minimize the role of the Federal government in implementing the statute.

The Secretary specifically requests comments from school officials regarding the practicality of a narrow interpretation. As proposed, if asked, an SEA or LEA would have to be able to identify which funds it used to develop, or otherwise implement, a survey. On the other hand, if the Secretary interpreted ''applicable program'' broadly, the regulations would apply to any survey given by a school that receives money from the Department, and an identification of whether Department money was used in developing or implementing the survey would be unnecessary. The Secretary welcomes comments on whether school officials believe the broader interpretation of ''applicable program'' would be less burdensome.

The Secretary also requests comments on whether it is clear that these proposed regulations only apply to surveys that are developed, purchased, implemented, or otherwise funded under Department programs covered by section 445 of GEPA. The Secretary also requests comments on whether the provisions regarding access and consent rights, §§ 98.10 and 98.20 respectively, provide adequate guidance.

As previously stated in the preamble the Secretary would like comments on whether the regulations should include a definition of ''survey'' (see discussion of § 98.3 Definitions) and ''required'' (see discussion of §§ 98.10, 98.20 Access and consent: Obtaining consent).

Finally, as already discussed, the regulations interpret the statute to apply to surveys administered in elementary or secondary schools because the statute specifically provides protections under this law to ''students.'' The Secretary requests specific comments on whether the statutory provisions should be interpreted to include surveys administered in settings outside of schools, such as Department-sponsored household-based surveys, conducted either by telephone or in person.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 1366, FOB–10, 600 Independence Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 98

Administrative practice and procedure, Education, Educational research, Privacy, Reporting and recordkeeping requirements, Schools, and Students.

Dated: August 21, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 98 to read as follows:

PART 98—PROTECTION OF PUPIL RIGHTS

Subpart A—General

Sec.
98.1 To which programs do these regulations apply?
98.2 What is the purpose of these regulations?
98.3 What definitions apply to these regulations?

Subpart B—Access

98.10 What are a parent's rights of access to a survey?

Subpart C—Consent

98.20 In what circumstances must an SEA, LEA, or other recipient obtain consent before requiring a student to submit to a survey?

Subpart D—Notification

98.30 What must an LEA include in its annual notification?

Subpart E—Enforcement

98.40 What are the functions of the Family Policy Compliance Office (Office) and the Office of Administrative Law Judges?
98.41 What are an SEA's and LEA's responsibilities in the case of a conflict with State or local laws?
98.42 What information must an SEA, LEA, or other recipient submit to the Office?
98.43 Where are complaints filed?
98.44 What is the complaint procedure?
98.45 What is the content of the notice of complaint issued by the Office?
98.46 What are the responsibilities of the Office in the enforcement process?
98.47 How does the Office enforce decisions?

Authority: 20 U.S.C. 1232h, unless otherwise noted.

Subpart A—General

§ 98.1 To which programs do these regulations apply?

This part applies to any applicable program, that is, any program for which the Secretary or the Department has administrative responsibility as provided by law or by delegation of authority pursuant to law.

(Authority: 20 U.S.C. 1232h)

§ 98.2 What is the purpose of these regulations?

Parents and students have the following rights under this part:

(a) Parental right to have access to certain surveys, analyses, or evaluations

(surveys), and the instructional materials used in connection with these surveys of a student.

(b) Parental or student right to consent before the student is required to submit to certain surveys.

(c) Parental or student right to file a complaint for alleged violations of the rights in paragraphs (a), (b), and (d) of this section.

(d) Parental or student right to receive effective notice of the rights under paragraphs (a), (b), and (c) of this section.

(Authority: 20 U.S.C. 1232h)

§ 98.3 What definitions apply to these regulations?

(a) The following terms used in this part are defined in 34 CFR 77.1:

Department
Elementary school
Grantee
Local educational agency (LEA)
Secondary school
Secretary
State educational agency (SEA).

(b) *Other definitions.* The following definitions also apply to this part:

Adult means an individual who has attained 18 years of age.

Emancipated minor means a person under 18 years of age who would be considered emancipated according to state law.

Recipient, for the purposes of this part, means a grantee, subgrantee, or contractor that receives financial assistance directly from the Department to carry out a project and includes the Department.

(Authority: 20 U.S.C. 1232h)

Subpart B—Access

§ 98.10 What are a parent's rights of access to a survey?

(a) An SEA, LEA, or other recipient that receives funds from the Department to develop or implement a survey shall make available for inspection by a parent or guardian of a student the survey, and the instructional materials used in connection with the survey, if the survey—

(1) Is administered in an elementary or a secondary school; and

(2) Asks the student to reveal information concerning one or more of the following areas:

(i) Political affiliations.

(ii) Mental and psychological problems potentially embarrassing to the student or his or her family.

(iii) Sex behavior and attitudes.

(iv) Illegal, anti-social, self-incriminating, and demeaning behavior.

(v) Critical appraisals of other individuals with whom the student has close family relationships.

(vi) Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers.

(vii) Income, other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under a program.

(b)(1) An SEA, LEA, or other recipient shall comply with a parent's request to inspect a survey (and the instructional material used in connection with the survey) under paragraph (a) of this section without unnecessary delay and in no case more than 45 days after the recipient receives the request.

(2) An SEA, LEA, or other recipient is not required to give a personal copy of the survey, and the instructional materials, to a parent who requests to inspect a survey under paragraph (a) of this section.

(c) An SEA, LEA, or other recipient may not destroy any survey, or any instructional material used in connection with the survey, if there is an outstanding request by a parent to inspect the material under this section.

(d) An SEA, LEA, or other recipient shall make the survey available for inspection under paragraph (a) of this section even if a student is not required to submit to the survey under § 98.20.

(Authority: 20 U.S.C. 1232h(a))

Subpart C—Consent

§ 98.20 In what circumstances must an SEA, LEA, or other recipient obtain consent before requiring a student to submit to a survey?

(a) An SEA, LEA, or other recipient shall obtain the prior consent of the parent or guardian of a student, or the student, if appropriate under paragraph (b) of this section, before the student is required to submit to the survey if the SEA, LEA, or other recipient—

(1) Uses funds, received from the Department, to develop or implement the survey;

(2) Administers the survey in an elementary or secondary school;

(3) Requires the student to submit to the survey; and

(4) Asks the student in the survey to reveal information concerning one or more of the areas listed in § 98.10(a)(2).

(b)(1) If a student is an unemancipated minor, the SEA, LEA, or other recipient must obtain the consent required in paragraph (a) of this section, in writing, from the parent or guardian of the student.

(2) If a student is an adult or emancipated minor, the SEA, LEA, or other recipient must obtain the consent required in paragraph (a) of this section from the student.

(c) To meet the requirements of prior consent the SEA, LEA, or other recipient must provide—

(1) An opportunity for the student or parent or guardian of a student to review a general description or summary of the type of information found in § 98.10(a)(2) that is included in the survey; and

(2) Information to the parent or guardian on the right to inspect these materials before the student submits to the survey.

(Authority: 20 U.S.C. 1232h(b))

Subpart D—Notification

§ 98.30 What must an LEA include in its notification?

(a) Each LEA shall give effective notice to parents of students in attendance, and to students currently in attendance at the LEA of their rights under this part.

(b) The notice must state that parents and students have the rights listed in § 98.2.

(c) As used in paragraph (a) of this section, effective notice means a notice that is reasonably likely to inform parents and students, including those with disabilities and those whose primary or home language is not English, of their rights.

(Authority: 20 U.S.C. 1232h(c))

Subpart E—Enforcement

§ 98.40 What are the functions of the Family Policy Compliance Office (Office) and the Office of Administrative Law Judges?

(a) The Family Policy Compliance Office (Office)—

(1) Investigates, processes, and reviews complaints of violations under this part; and

(2) Provides technical assistance to ensure compliance with this part.

(b) The Office of Administrative Law Judges has jurisdiction to conduct the following proceedings to enforce the requirements in this part—

(1) Hearings for recovery of funds.

(2) Withholding hearings.

(3) Termination hearings.

(4) Cease and desist hearings.

(Authority: 20 U.S.C. 1232h(e))

§ 98.41 What are an SEA's and LEA's responsibilities in the case of a conflict with State or local laws?

If an SEA or LEA determines that it cannot comply with any of the requirements of this part due to a conflict with State or local laws, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

(Authority: 20 U.S.C. 1232h)

§ 98.42 What information must an SEA, LEA, or other recipient submit to the Office?

The Office may require an SEA, LEA, or other recipient to submit reports containing information necessary—

(a) To resolve complaints under this part, including information regarding the source of funding for the survey; and

(b) To ensure that SEAs, LEAs, or other recipients are complying with the statute.

(Authority: 20 U.S.C. 1232h)

§ 98.43 Where are complaints filed?

A parent or student, as appropriate under § 98.44(a), may file a written complaint with the Office regarding an alleged violation under this part. The Office's address is: Family Policy Compliance Office, U.S. Department of Education, 600 Independence Avenue, SW., FOB–10, room 1366, Washington, D.C. 20202–4605.

(Authority: 20 U.S.C. 1232h(d))

§ 98.44 What is the complaint procedure?

(a)(1) A parent may file a complaint under this part for alleged violations of the parent's rights of access, consent, or to be notified of the parent's rights under §§ 98.10, 98.20, and 98.30.

(2) A student who is an emancipated minor or an adult may file a complaint under this part for alleged violations of the student's rights to consent or to be notified of the student's rights under §§ 98.20 and 98.30.

(b) A complaint filed under § 98.43 must contain specific allegations of fact giving reasonable cause to believe that a violation of this part has occurred.

(c) The Office investigates each timely complaint to determine whether the SEA, LEA, or other recipient has failed to comply with the provisions of this part.

(d)(1) For purposes of this section, a timely complaint is an allegation of a violation of this part that is submitted to the Office within 180 days of—

(i) The date of the alleged violation; or

(ii) The date that the complainant knew or reasonably should have known of the alleged violation.

(2) The Office may extend the time limit in this section if the complainant shows that he or she was prevented by circumstances beyond the complainant's control from submitting the matter within the time limit, or for other reasons considered sufficient by the Office.

(Authority: 20 U.S.C. 1232h(d))

§ 98.45 What is the content of the notice of complaint issued by the Office?

(a) The Office notifies the complainant and the SEA, LEA, or other recipient in writing if it initiates an investigation of a complaint under § 98.46(b). The notice to the SEA, LEA, or other recipient—

(1) Includes the substance of the alleged violation; and

(2) Requests that the SEA, LEA, or other recipient submit a written response to the complaint.

(b) The Office notifies the complainant if it does not initiate an investigation of a complaint because the complaint fails to meet the requirements of § 98.44.

(Authority: 20 U.S.C. 1232h(d))

§ 98.46 What are the responsibilities of the Office in the enforcement process?

(a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant and the SEA, LEA, or other recipient written notice of its findings and the basis for its findings.

(c) If the Office finds that the SEA, LEA, or other recipient has not complied with this part, the notice under paragraph (b) of this section—

(1) Includes a statement of the specific steps that the SEA, LEA, or other recipient must take to comply; and

(2) Provides a reasonable period of time, given all the circumstances of the case, during which the SEA, LEA, or other recipient may comply voluntarily.

(Authority: 20 U.S.C. 1232h(d))

§ 98.47 How does the Office enforce decisions?

(a) If the SEA, LEA, or other recipient other than a contractor does not comply during the period of time set under § 98.46(c)(2), the Office may, in accordance with part D of the General Education Provisions Act—

(1) Withhold, recover, or terminate funds under 34 CFR 81.3; or

(2) Issue a complaint to compel compliance through a cease-and-desist order under 34 CFR 81.3.

(b) If a contractor does not comply during the period of time set under § 98.13(c)(2), the Office may direct the contracting officer to take an appropriate action authorized under the Federal Acquisition Regulation, including either—

(1) Issuing a notice to suspend operations under 48 CFR 12.5; or

(2) Issuing a notice to terminate for default, either in whole or in part under 48 CFR 49.102.

(c) If, after an investigation under § 98.44(c), the Secretary finds that an SEA, LEA, or other recipient has complied voluntarily with this part, the Secretary provides the complainant and the SEA, LEA, or other recipient written notice of the decision and the basis for the decision.

(Authority: 20 U.S.C. 1232h(d))

[FR Doc. 95–21227 Filed 8–25–95; 8:45 am]

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federal register

Monday
August 28, 1995

Part VIII

Department of the Interior

Bureau of Indian Affairs

Office of Trust Management National Tribal Consultation; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Office of Trust Funds Management National Tribal Consultation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of tribal consultation meeting.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA), Office of Trust Funds Management (OTFM), will conduct a consultation meeting with any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, to obtain oral and written comments regarding draft regulations for Public Law 103–412, The American Indian Trust Fund Management Reform Act concerning:

1. These draft proposed regulations will implement Title II, Public Law 103–412, The American Indian Trust Fund Management Reform Act, CFR 144.

2. The purpose of the regulations in this part is to describe the processes by which Indian tribes can manage tribal funds currently held in trust by the United States. This rule defines how tribes may withdraw their funds from trust status; how they may return funds to trust; and how they may request technical assistance or grants to help prepare plans to manage funds or to ensure the capability to manage those funds.

All oral and written comments presented by tribes at the tribal consultation meeting will be recorded, transcribed and taken into consideration by the agency in the development of the final regulations. Each tribe will be given a minimum of five minutes for presentation of oral testimony.

DATES: The consultation meeting will be held on September 20, 1995 from 8:30 a.m. to 4:00 p.m.

ADDRESSES: Tropicana Hotel, 3801 Las Vegas Boulevard South (Las Vegas Blvd. at Tropicana Blvd.), Las Vegas, NV 89109. Telephone Number: 702–739–2222.

FOR FURTHER INFORMATION CONTACT: The OTFM, Bureau of Indian Affairs, Joe Weller, Branch of Policy and Procedures, 505 Marquette NW., Suite 700, Albuquerque, New Mexico 87102, telephone number 505–766–8606, fax number 505–766–8641.

SUPPLEMENTARY INFORMATION: The purpose of the consultation meeting is to provide Indian tribes an opportunity for participation in the development of these regulations. Briefing books and deadline dates for the submission of written comments on the proposed actions and regulations will be mailed to all Federally recognized Indian tribes who now have funds held in trust by the Secretary of the Interior, and to BIA area directors. The Department of the Interior is considering publishing these regulations as interim regulations, so that they will be effective immediately upon being published for public comment.

Dated: August 22, 1995.

Michael J. Anderson,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 95–21258 Filed 8–25–95; 8:45 am]

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federal register

Monday
August 28, 1995

Part IX

Office of Government Ethics

5 CFR Part 2640

Certain Miscellaneous Exemptions Under 18 U.S.C. 208(b)(2); Acts Affecting a Personal Financial Interest; Interim Rule

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2640

RIN 3209–AA09

Certain Miscellaneous Exemptions Under 18 U.S.C. 208(b)(2) (Acts Affecting a Personal Financial Interest)

AGENCY: Office of Government Ethics (OGE).

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Government Ethics (OGE) is issuing an interim regulation describing the circumstances under which certain financial interests arising from Federal Government employment in the executive branch are exempt from the prohibition in 18 U.S.C. 208(a). Section 208(a) generally prohibits employees of the executive branch from participating in an official capacity in particular matters in which they have a financial interest. It also bars employees from acting in particular matters in which certain other persons or entities, which are specified in the statute, have a financial interest. Section 208(b)(2) of title 18 permits the Office of Government Ethics to promulgate executive branch-wide regulations describing financial interests that are too remote or inconsequential to warrant disqualification pursuant to section 208(a). This interim regulation exempts, in certain circumstances, disqualifying financial interests that an employee may have in Federal salary and benefits, or in Social Security or veterans' benefits.

DATES: This interim regulation is effective August 28, 1995 Comments by agencies and the public are invited and are due by October 27, 1995.

ADDRESSES: Office of Government Ethics, suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917. Attention: Ms. Glynn.

FOR FURTHER INFORMATION CONTACT: Marilyn Glynn, Office of Government Ethics, telephone 202–523–5757, FAX 202–523–6325.

SUPPLEMENTARY INFORMATION: Section 208(a) of title 18 of the United States Code prohibits Government employees from participating in an official capacity in particular Government matters in which, to their knowledge, they or certain other persons specified in the statute have a financial interest, if the matter would have a direct and predictable effect on the financial interest. Section 208(d)(2) directs the Office of Government Ethics, after consultation with the Attorney General, to adopt uniform regulations exempting financial interests from the applicability of section 208(a) for all or a portion of the executive branch if it determines that such interests are either too remote or too inconsequential to affect an employee's services to the Government. Further, section 201(c) of Executive Order 12674, as modified by E.O. 12731, states that OGE is to obtain the concurrence of the Department of Justice for any section 208 regulations it promulgates. The Office of Government Ethics has obtained that concurrence for this interim rule. Finally, as provided in section 402 of the Ethics in Government Act of 1978, as amended, 5 U.S.C. appendix, OGE has consulted with the Office of Personnel Management on this interim rule.

The Office of Government Ethics will soon be issuing in the **Federal Register** a proposed regulation describing a variety of holdings or relationships that OGE has determined are either too remote or too inconsequential in value to be likely to affect an employee's consideration of any particular matter. That proposed regulation will also contain a more detailed analysis of section 208, and guidance on individual waivers of disqualifying financial interests that agencies may grant under 208 (b)(1) and (b)(3). The text of this interim regulation will be included in the appropriate place in the overall proposed section 208 regulation.

This interim regulation exempts disqualifying financial interests that arise from employment in the executive branch of the Federal Government. With certain exceptions, the regulation specifically exempts an employee's interest in his Government salary and benefits, and his interest in Social Security and veterans' benefits. It also exempts, with certain exceptions, the disqualifying financial interests that arise from the Federal Government employment interests of an employee's spouse, minor child, general partner, or anyone with whom he is negotiating or has an arrangement for prospective employment. As noted, it is anticipated that the exemption for salary and benefits in this interim regulation will be added to the larger group of exemptions that will be published as a proposed regulation, as described above.

I. Background

The question of whether an executive branch employee may have a disqualifying financial interest in his Government salary and benefits has been addressed a number of times, but has never been definitively resolved. An opinion issued by the Office of Legal Counsel (OLC) of the Department of Justice in 1993 concluded that section 208 did not apply to payments made to employees under section 7 of the Technology Transfer Act, 15 U.S.C. 1501–1534, because such payments ''are indistinguishable for these purposes from salary, benefits, and other payments such as performance awards.'' Memorandum for Stephen D. Potts, Director, Office of Government Ethics, from Walter Dellinger, Acting Assistant Attorney General, Office of Legal Counsel, Re: Ethics Issues Related to the Federal Technology Transfer Act of 1986 (September 13, 1993). The opinion stated that section 208 was intended to cover only ''outside'' financial interests and therefore would not bar an employee from participating in matters that would affect his Government compensation.[1] A copy of this OLC memorandum is available from OGE (see the **FOR FURTHER INFORMATION CONTACT** block above).

The notion that section 208 applies only to so-called ''outside'' financial interests has some support in the statute's legislative history. In 1962, section 208 replaced 18 U.S.C. 434 which barred employees from acting in an official capacity in the transaction of business with any business entity in which they were ''directly or indirectly interested in the pecuniary profits or contracts.'' The Senate Report on the bill that became section 208 described the provision as follows:

> The disqualification of the subsection embraces any participation on behalf of the Government in a matter in which the employee has an outside financial interest, even though his participation does not involve the transaction of business.

S. Rep. No. 2213, 87th Cong., 2d Sess. 12 (1962).

Practical considerations might also favor interpreting section 208 to conclude that an employee does not have a disqualifying financial interest in

[1] In 1980, OLC also concluded that section 208 was inapplicable to financial interests which arise from Government employment and salary, where no outside financial interest was implicated. *See* Memorandum for Thomas Martin, Deputy Assistant Attorney General, Civil Division, from Leon Ulman, Deputy Assistant Attorney General, Office of Legal Counsel, Re: 18 U.S.C. § 208 and Pending Salary Adjustment Litigation (January 24, 1980). Subsequently, however, OLC questioned the correctness of the 1980 opinion in two other opinions dealing with section 208. *See* Memorandum for Richard K. Willard, Assistant Attorney General, Civil Division, from Charles J. Cooper, Assistant Attorney General, Office of Legal Counsel, Re: 18 U.S.C. § 208 and Participation of Departmental Attorneys in Debt Ceiling Litigation p. 2 at n.1 (December 6, 1985); Memorandum for the Solicitor of the Interior, from Samuel A. Alito, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Scope of the Term ''Particular Matter'' under 18 U.S.C. § 208 p. 9 at n.13 (January 12, 1987). Copies of all of these memoranda also are available from OGE.

his Government position and salary. Otherwise, an employee's routine performance of duties might be viewed as creating a disqualifying financial interest. For example, it may be argued that every time an employee strives to enthusiastically and conscientiously perform his duties, he increases the likelihood that he will receive a favorable performance rating and a subsequent bonus. Similarly, simply asking for a promotion or submitting an official request for travel reimbursement might be considered participating in a particular matter that would have a direct and predictable effect on the employee's financial interest.

On the other hand, it is arguable that since section 208 was intended to cover a broader range of activities than section 434,[2] it plainly encompasses actions affecting financial interests arising from Government employment. In *United States* v. *Lund*, 853 F.2d 242 (4th Cir. 1988), the court found that section 208 barred an employee from acting in matters affecting his spouse's Government employment interests.[3] The court noted that

> the language of section 208(a), unlike that of its predecessor, is not restricted to conflicts of interest in matters involving outside entities, and nothing in the legislative history reveals a congressional intent to limit that broad language to less than its normal span. To the contrary, the legislative history indicates that Congress was fully aware of the potential breadth of the new statute * * * [t]hat the legislative history contains no specific mention of conflicts of interest in internal personnel matters cannot be taken as affirmative evidence that it did not intend the statute's sweeping language to reach them * * *.

Id. at 246.

Moreover, it is not difficult to envision examples of employee participation in matters relating to salary and benefits that would clearly appear to amount to a conflict of interest under section 208. For example, no one seriously doubts that it would be improper for an employee to participate in Government matters that have a unique or individual impact on the employee's own salary or benefits, such as approving his own promotion or awarding himself a cash bonus for superior performance. It is generally acknowledged that it would be similarly inappropriate for an employee to approve his general partner's pay increase or performance bonus.

II. Need for Exemption

In light of the somewhat differing interpretations of section 208 that have been advanced, and in order to resolve continuing questions about the applicability of section 208 to Federal salary and benefits, the Office of Government Ethics, in consultation with and with the concurrence of the Department of Justice, has decided to treat financial interests that arise from Government salary and employment as disqualifying under section 208(a). This regulation, however, would exempt most of those financial interests from the disqualification provision of section 208(a).

Given the ambiguous nature of existing advice on and interpretations of section 208, OGE's decision to publish this exemption should not be construed as an indication that any particular activity in which an employee might have engaged prior to publication of this regulation was a violation of section 208. The exemption simply provides employees with reassurance that performance of the duties required by their positions does not amount to a violation of section 208. Additionally, the exemption and the illustrative examples describe the types of activities that are not covered by the exemption, and in which the employee may not engage in the absence of an individual waiver under section 208 (b)(1) or (b)(3).

The need for the exemption is particularly important at this time because a number of executive branch Departments and agencies are engaged in ''reinvention'' or ''privatization'' activities that will result in the elimination of Federal positions. In some cases, employee involvement in these activities necessarily will affect financial interests arising from Government salary and benefits. However, the exemption will permit an employee to engage in many of these activities, with certain limited exceptions described below.

III. Exemption for Interests Arising From Government Salary and Benefits or From Social Security or Veterans' Benefits

Section 2640.101 applies to executive branch employees whose activities affect Government salary or benefits, or veterans' or Social Security benefits. With two exceptions, the provision exempts all disqualifying financial interests that arise from Federal salary or benefits, or from Social Security or veterans' benefits. The exemption does not permit an employee to make (1) determinations that individually or specially affect his own financial interest in Government salary and benefits, or (2) determinations, requests, or recommendations that individually or specially relate to, or affect the Government employment-related financial interests of any other person specified in section 208, such as the employee's spouse, minor child, or general partner.

To the extent that the performance of everyday duties affects an employee's potential for promotion, for receiving a bonus or other similar benefit having monetary value, or even for being removed involuntarily from Federal service, the exemption at § 2640.101 applies to all employees. It also applies to employees who affirmatively ask for action on, or otherwise make requests or recommendations about, their own salary and benefits. The exemption would permit employees, for example, to ask for pay raises and promotions, for transfers to higher-paid positions, and for reimbursement of travel expenses. The exemption applies to employee participation in matters that would affect a panoply of interests that derive from Government employment, such as salary, premium pay, performance bonuses, recruitment and relocation payments, Technology Transfer Act payments, leave, compensatory time, pensions, health and life insurance, buyouts and early outs, payment of the costs of training or continuing education, disability payments, housing allowances, severance pay, unemployment compensation, authorized personal use of agency equipment, and Government day care facility expenses. The exemption does not permit employees to make determinations, such as approvals or disapprovals, that would have an individual or special effect on their financial interests. Thus, while an employee could request that his agency pay the cost of his tuition at a local university, the employee could not approve his own request.

[2] Unlike prior section 434, section 208 is applicable to matters that would affect the interests of an employee's spouse, minor child, general partner, and certain other persons or organizations with which the employee has a specified relationship. It also applies to a wider scope of Government activities than simply those that amount to the ''the transaction of business.'' Instead, it applies to applications, contracts, judicial proceedings and other similar particular matters.

[3] In *Lund*, the employee secretly married a suboradinate and subsequently promoted her to another position, granted her pay increases, and recommended that the Government pay her tuition for a masters' degree program. The court's determination that section 208 applies to internal personnel matters may have been influenced by the fact that the marriage was concealed from agency officials.

The exemption does allow an employee to make a determination (as well as a request or recommendation) affecting his own financial interest (or that of anyone else specified in section 208), as long as that interest is not affected in an individual or special way. This aspect of the exemption has particular applicability to employees who administer employee benefit plans for their own agency, or for the executive branch as a whole. The responsibilities of these employees, of course, affect their own interests to the extent that they affect the interests of all employees. The exemption permits them to continue to perform their functions, provided the matters in which they act are not ones in which they, or any other person specified in section 208, have an individual or special interest. For example, the exemption permits employees of the Federal Retirement Thrift Investment Board to promulgate less stringent standards for borrowing from thrift accounts, even though the employees may participate in the thrift savings plan themselves and may borrow from their accounts. Similarly, the exemption permits an employee of the Federal Reserve (the ''Fed'') who participates in the Fed pension plan to administer the plan within the Fed.

The exemption also permits an employee whose agency is involved in ''privatization'' or ''reinvention'' activities to participate in certain of those activities even when his own position, salary, or benefits might be affected. As the provision specifies, an employee may participate in such activities provided that he does not make any determination that has a special or individual effect on his salary and benefits. Thus, for example, an employee could serve on an agency task force that makes a recommendation to the agency head to eliminate the agency component to which he is assigned. In the absence of an individual waiver under section 208(b)(1) or (b)(3), however, the employee could not be responsible for deciding which of two senior positions in the component should be eliminated—his own or that of another senior employee. If the matter would have a direct and predictable effect on the salary and benefits of a very small number of employees, including that of the employee charged with the responsibility to act, the employee should not participate without first receiving an individual waiver.

Moreover, matters that would affect an ''outside'' interest of the employee, such as his interest in obtaining a position with a contractor who will be taking over a ''privatized'' Government function, are not governed by this exemption. For example, where an agency has decided to transfer certain agency functions to an employee-owned (or ESOP) corporation, an employee whose position will be transferred to the new corporation could not, absent an individual waiver, participate on an agency task force advising the independent trustee who is charged with creating the ESOP corporation. The new position is not a financial interest that arises from Federal salary or benefits. However, an employee who evidences her intent to retire from the Government when the agency function is transferred to the ESOP corporation may participate in task force activities since she has no financial interest in a new position in the new corporation.

The exemption does not permit an employee to make requests or recommendations, as well as determinations, in matters that would have an individual or special effect on the financial interests of anyone else specified in section 208.[4] *See* § 2640.101(b). For example, this exemption does not permit an employee to recommend that his spouse receive an award for meritorious service. Nor does it permit an employee to determine that his general partner should receive compensatory time for work performed in excess of the normal tour of duty. The Office of Government Ethics believes that it would be inappropriate to exempt recommendations and requests (as well as determinations) in matters that would specifically affect the financial interests of other persons specified in section 208. The narrower exemption for matters affecting a person other than an employee specified in section 208 is warranted because the employee's relationship with that other person might not be generally known, and the employee's impartiality in such matters reasonably might be questioned. Making a request or recommendation in a matter affecting one's own position is on a different footing since the employee's potential bias is readily recognizable.

Within the limitations specified in § 2640.101 (a) and (b), the provision also permits employees whose duties concern Social Security and veterans' benefits to participate in matters affecting those benefits. Accordingly, an employee at the Social Security Administration could recommend and approve changes to certain procedures for applying for Social Security benefits even though her spouse is an applicant for benefits.[5] However, the exemption would not permit her to approve her spouse's application for benefits. The exemption also would not permit an employee to take an action in violation of some other statutory or regulatory provision such as the prohibitions on nepotism in 5 U.S.C. 3110.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 C.F.R. 553 (b) and (d), I find that good cause exists for waiving the general requirements of notice of proposed rulemaking and 30-day delayed effective date for this interim rule. These requirements are being waived because this regulation grants certain exemptions under the applicable conflict of interest law, 18 U.S.C. 208. Moreover, it is in the public interest that this regulation take effect as soon as possible in order to clarify the permissible limits of employees' official actions when certain of their financial interests may be affected. Interested persons are invited to submit written comments to OGE on this interim regulation, to be received on or before October 27, 1995. The Office of Government Ethics will review all comments received and consider any modifications to this rule which appear warranted. This same provision will also be part of the overall proposed section 208 regulation which OGE will publish in a separate rulemaking document.

Executive Order 12866

In promulgating this proposed 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 interim rule has also been reviewed by

[4] Of course, because only individual persons may become Government employees, the exemption has no relevance to matters affecting *organizations* the employee serves as officer, director, trustee, general partner, or employee, or those with which he is negotiating or has an arrangement for prospective employment. The persons specified in section 208 that are relevant for purposes of this exemption include the employee's spouse, minor child, general partner, or individual person with whom the employee is negotiating or has an arrangement for prospective employment, or for whom he serves as an employee in a position outside the Government.

[5] As indicated in the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. 2635.402(b)(3), not all Government matters are sufficiently focused on the interests of a discrete and identifiable class of persons that they can be considered ''particular matters'' within the meaning of section 208. Example one accompanying § 2635.402(b)(3) makes clear that certain Social Security procedures are not ''particular matters.'' This exemption applies to those Social Security matters that are focused on the interests of a discrete and identifiable class of persons, and therefore are considered ''particular matters'' for purposes of section 208.

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 interim regulation will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this interim regulation does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2640

Conflict of interests, Government employees.

Approved: July 21, 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 amending title 5, chapter XVI, subchapter B of the Code of Federal Regulations by adding a new part 2640 to read as follows:

PART 2640—MISCELLANEOUS EXEMPTIONS UNDER 18 U.S.C. 208(b)(2) (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)

§ 2640.101 Exemptions for financial interests arising from Federal Government employment or from Social Security or veterans' benefits.

An employee may participate in any particular matter, whether of general applicability or involving specific parties, where the disqualifying financial interest arises from Federal Government salary or benefits, or from Social Security or veterans' benefits, except an employee may not:

(a) Make determinations that individually or specially affect his own Government salary and benefits, or Social Security or veterans' benefits; or

(b) Make determinations, requests, or recommendations that individually or specially relate to, or affect, the Government salary or benefits, or Social Security or veterans' benefits of any other person specified in section 208.

Note: This exemption does not permit an employee to take any action in violation of any other statutory or regulatory requirement, such as the prohibition on the employment of relatives at 5 U.S.C. 3110.

Example 1: An employee of the Office of Management and Budget may vigorously and energetically perform the duties of his position even though his outstanding performance would result in a performance bonus or other similar merit award.

Example 2: A policy analyst at the Defense Intelligence Agency may request promotion to another grade or salary level. However, the analyst may not recommend or approve the promotion of her general partner to the next grade.

Example 3: An engineer employed by the National Science Foundation may request that his agency pay the registration fees and appropriate travel expenses required for him to attend a conference sponsored by the Engineering Institute of America. However, the employee may not approve payment of his own travel expenses and registration fees.

Example 4: A GS–14 attorney at the Department of Justice may review and make comments about the legal sufficiency of a bill to raise the pay level of all Federal employees paid under the General Schedule even though her own pay level, and that of her spouse who works at the Department of Labor, would be raised if the bill were to become law.

Example 5: An employee of the Department of Veterans Affairs (VA) may assist in drafting a regulation that will provide expanded hospital benefits for veterans, even though he himself is a veteran who would be eligible for treatment in a hospital operated by the VA.

Example 6: An employee of the Office of Personnel Management may participate in discussions with various health insurance providers to formulate the package of benefits that will be available to Federal employees who participate in the Government's Federal Employees Health Benefits Program, even though the employee will obtain health insurance from one of these providers through the program.

Example 7: An employee of the Federal Supply Service Division of the General Services Administration (GSA) may participate in GSA's evaluation of the feasibility of privatizing the entire Federal Supply Service, even though the employee's own position would be eliminated if the Service were privatized.

Example 8: Absent an individual waiver under section 208(b)(1), the employee in the preceding example could not participate in the implementation of a GSA plan to create an employee-owned private corporation which would carry out Federal Supply Service functions under contract with GSA. Because implementing the plan would result not only in the elimination of the employee's Federal position, but also in the creation of a new position in the new corporation to which the employee would be transferred, the employee would have a disqualifying financial interest in the matter arising from other than Federal salary and benefits, or Social Security or veterans' benefits.

Example 9: A career member of the Senior Executive Service (SES) at the Internal Revenue Service (IRS) may serve on a performance review board that makes recommendations about the performance awards that will be awarded to other career SES employees at the IRS. The amount of the employee's own SES performance award would be affected by the board's recommendations because all SES awards are derived from the same limited pool of funds. However, the employee's activities on the board involve only recommendations, and not determinations that individually or specially affect his own award. Additionally, 5 U.S.C. 5384(c)(2) requires that a majority of the board's members be career SES employees.

Example 10: In carrying out a reorganization of the Office of General Counsel (OGC) of the Federal Trade Commission, the Deputy General Counsel is asked to determine which of five Senior Executive Service (SES) positions in the OGC to abolish. Because her own position is one of the five SES positions being considered for elimination, the matter is one that would individually or specially affect her own salary and benefits and, therefore, the Deputy may not decide which position should be abolished.

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 208; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

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August 28, 1995

Part X

Federal Trade Commission

16 CFR Part 311

Test Procedures and Labeling Standards for Recycled Oil; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 311

Test Procedures and Labeling Standards for Recycled Oil

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 383 of the Energy Policy and Conservation Act of 1975 (''EPCA'') directs the Federal Trade Commission (''FTC'' or ''Commission'') to promulgate a rule prescribing test procedures and labeling standards applicable to recycled oil. The Commission is required to prescribe the rule within 90 days after the National Institute of Standards and Technology (''NIST'') reports to the Commission the test procedures to determine the substantial equivalency of processed used oil with new oil distributed for a particular end use. Because NIST has reported the relevant test procedures to the Commission, this notice announces the Commission's proposed rule implementing the statutory directive. The Commission invites interested persons to submit written comments addressing any issue they believe may bear upon the proposed rule. After reviewing comments received in response to this notice, the Commission will publish a final rule.

DATES: Written comments must be submitted on or before September 27, 1995. Due to the time constraints of this rulemaking proceeding, the Commission does not contemplate any extensions to this comment period.

ADDRESSES: Written comments should be submitted to Office of the Secretary, Federal Trade Commission, room 159, Sixth and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number 202–326–2506. Comments should be identified as ''16 CFR Part 311 Comment-Recycled Oil.'' If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format used). Written comments should be submitted, when feasible and not burdensome, in six copies.

FOR FURTHER INFORMATION CONTACT: Neil J. Blickman, Attorney, or Laura Koss, Attorney, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Room S–4631, Sixth and Pennsylvania Ave., NW., Washington, DC 20580, telephone numbers 202/326–3038, or 202/326–2890.

SUPPLEMENTARY INFORMATION:

I. Background

A. EPCA's Requirements

The purposes of the recycled oil section of EPCA are to encourage the recycling of used oil, to promote the use of recycled oil, to reduce consumption of new oil by promoting increased utilization of recycled oil, and to reduce environmental hazards and wasteful practices associated with the disposal of used oil.[1] To achieve these goals, section 383 of EPCA directs NIST to develop test procedures for the determination of the substantial equivalency of re-refined or otherwise processed used oil or blend of oil (consisting of such re-refined or otherwise processed used oil and new oil or additives) with new oil distributed for a particular end use and to report such test procedures to the Commission.[2] Within 90 days after receiving such report from NIST, the Commission is required to prescribe, by rule, the substantial equivalency test procedures, as well as labeling standards applicable to containers of recycled oil.[3] EPCA further requires that the Commission's rule permit any container of processed used oil to bear a label indicating any particular end use, such as for use as engine lubricating oil, so long as a determination of ''substantial equivalency'' with new oil has been made in accordance with the test procedures prescribed by the Commission.[4]

Once this proposed rule becomes final, no Commission order or rule, and no law, regulation, or order of any State (or political subdivision thereof), may remain in effect if it has labeling requirements with respect to the comparative characteristics of recycled oil with new oil that are not identical to the labels permitted by this rule.[5] Also, no rule or order of the Commission may require any container of recycled oil to also bear a label containing any term, phrase, or description connoting less than substantial equivalency of such recycled oil with new oil.[6]

Section 383 of EPCA does not specify any particular rulemaking procedures that must be followed. The Commission, therefore, is using the notice and comment rulemaking procedures of the Administrative Procedure Act (''APA'') to obtain the views of interested parties. 5 U.S.C. 553(b) and (c). Pursuant to section 553(b)(3) of the APA, the Commission has elected to publish the specific terms of its proposed rule. 5 U.S.C. 553(b)(3).

B. The FTC Used Oil Rule and the Used Oil Recycling Act

In 1964, prior to the enactment of EPCA, the Commission had promulgated a trade regulation rule relating to the advertising and labeling of previously used lubricating oil (''Used Oil Rule'').[7] The Rule was based on the Commission's finding that whether a lubricant has been made from crude oil or from used oil is material to consumers, and it was promulgated to prevent deception of those consumers who prefer new and unused lubricating oil. Specifically, the Rule requires that advertising, promotional material, and labels on containers of lubricant made from used oil disclose that such used lubricating oil has been previously used. The Rule further states that it is an unfair method of competition and an unfair and deceptive act or practice to represent in any manner that used lubricating oil is new or unused and to use the term ''re-refined,'' or any other term of similar import, to describe previously used lubricating oil unless the physical and chemical contaminants acquired through previous use have been removed by a refining process.[8]

On October 15, 1980, the Used Oil Recycling Act, which reiterated Congress' policy favoring the recycling of used oil, suspended the provision of the Used Oil Rule, as well as any similar provision in a Commission order, requiring labels to disclose the origin of lubricants made from used oil.[9] The

[1] 42 U.S.C. 6363(a).

[2] 42 U.S.C. 6363(c). Although EPCA does not explicitly define the term ''processed used oil,'' it is defined herein to mean re-refined or otherwise processed used oil or any blend of such oil, consistent with the definition of ''recycled oil'' at 42 U.S.C. 6363(b)(2)(A) and (B).

[3] 42 U.S.C. 6363(d). Recycled oil, as defined in section 6363(b)(2) of EPCA is either (a) used oil from which physical and chemical contaminants acquired through prior use of the oil have been removed by refining or other processing, or (b) any blend of re-refined or otherwise processed used oil and new oil or additives, that, for either (a) or (b), the manufacturer has determined, pursuant to the Commission's rule, is substantially equivalent to new oil for a particular end use.

[4] 42 U.S.C. 6363(d)(1)(B).

[5] 42 U.S.C. 6363(e)(1).

[6] 42 U.S.C. 6363(e)(2).

[7] 16 CFR 406.

[8] 16 CFR 406.5.

[9] Used Oil Recycling Act of 1980, Pub. L. 96–463, 94 Stat. 2055 (codified as amended in scattered sections of 42 U.S.C.). Section 4(c) of the Used Oil Recycling Act provides that before the effective date of the FTC rule prescribed under section 383 of EPCA, no requirement of any rule or order of the FTC could remain applicable if it required that a container of recycled oil bear any label referring to the fact that its contents were derived from previously used oil. However, section 4(c) does not restrict the ability of the FTC to regulate the labeling of oil on the basis of performance characteristics or fitness for its intended use. *See* 42 U.S.C. 6363 note.

legislative history of the Used Oil Recycling Act indicates that Congress was concerned that the requirement in the FTC's Rule that previously used oil be labeled as such was having an adverse impact on consumer acceptance of recycled oil, provided no useful information to consumers concerning the performance of the oil, and was inhibiting recycling. The re-refining industry and environmental community contended that such labeling gave consumers the incorrect impression that the product is inferior, while providing no information relating to its quality. According to Congress, the intent of section 383 of EPCA was clear. ''Oil should be labeled on the basis of performance characteristics and fitness for intended use, and not on the basis of the origin of the oil.'' [10] The legislative history also states that the Commission, in response to a petition of the Association of Petroleum Re-refiners, published a proposed Statement of Enforcement Policy on August 19, 1980 announcing its intention to replace the term ''used'' with ''recycled'' on the belief that the term ''recycled'' connotes more accurately the origin and processing of the product.[11] However, the Association of Petroleum Re-refiners expressed its concern to Congress that even the term ''recycled'' was likely to inhibit sales of re-refined oil because the label might suggest that the product is in some way inferior. The Commission's proposed Statement of Enforcement Policy would become effective on October 18, 1980. However, the Used Oil Recycling Act, which was enacted just days before, suspended any Commission labeling requirements until a final Commission rule is issued under EPCA.

Accordingly, on April 8, 1981, the Commission published a notice announcing the statutory suspension of the origin labeling requirements of the Used Oil Rule and relevant orders. In the same notice, the Commission announced a Statement of Enforcement Policy suspending enforcement of those portions of the Used Oil Rule and Commission orders requiring that advertising and promotional material disclose the origin of lubricants made from used oil.[12]

C. Basis for this Proceeding

On July 27, 1995, NIST reported to the Commission the test procedures for the determination of the substantial equivalency of processed used engine oils with new engine oils.[13] The test procedures and performance standards reported by NIST for such processed used engine lubricating oils are the same as those adopted by the American Petroleum Institute (''API'') for engine lubricating oils generally, irrespective of the origin of the oil. As required by EPCA, the Commission is proposing in this notice a rule regarding the labeling of containers of recycled engine oil.

D. The Used and Re-refined Oil Markets

According to the Environmental Protection Agency, approximately 1.5 billion gallons of used oil are made available for collection or disposal each year. Of this 1.5 billion, some 900 million gallons are collected; the remaining 600 million gallons are disposed of improperly. Of the 900 million gallons that are collected, approximately 100 million gallons are used as feedstock for re-refineries. The primary use for used oil is as fuel for industrial boilers and marine engines. Re-refined oil is used oil from which all contaminants have been removed. Re-refiners use a sophisticated process, including hydrotreating,[14] to produce re-refined base oils that pass the API tests and meet the International Lubricant Standardization and Approval Committee requirements for motor oils.

The volume of re-refined base oil sold or used in the United States is approximately 65 million gallons per year. This represents a relatively small, but still significant, portion of the total U.S. lubricating oil market of some 1.2 billion gallons per year. The principal products made from re-refined based oils are: gear lubricants, hydraulic oils, power transmission fluids, passenger car motor oils, diesel engine oils, and railroad diesel engine oils. Virgin oils are also used to produce all of these products.

The principal customers for re-refined base oils are lubricant manufacturers who produce the various products mentioned above. These products are sold in the same markets as lubricants made from virgin base oil. For example, some re-refiners sell base oil to other manufacturers for use in producing finished lubricant products, and some directly produce finished products that may then be sold to distributors, mass merchandisers, and large private end-users.

II. Scope of the Proposed Rule

As discussed above, EPCA directs the Commission to issue a rule prescribing: (1) test procedures for determining the substantial equivalency of processed used oil with new oil for a particular end use; and (2) labeling standards applicable to containers of such recycled oil.[15] NIST has reported test procedures and performance standards for determining the substantial equivalency of processed used engine oils with new engine oils. Until NIST develops test procedures for other end uses, the scope of the rule is limited to engine oil.

III. Section-by-Section Discussion of Proposed Rule

EPCA gives the Commission broad latitude to prescribe labeling standards to effectuate the statute's purposes. EPCA, however, requires that the Commission's rules permit any container of processed used oil to bear a label indicating any particular end use for which a determination of ''substantial equivalency'' with new oil has been made in accordance with the test procedures prescribed by the Commission.[16] EPCA further states that the Commission's rule may not require any container of recycled oil to also bear a label containing any term, phrase, or description connoting less than substantial equivalency of such recycled oil with new oil.[17]

Section 311.1

Section 311.1 of the proposed rule defines the following terms, which are used in the proposed regulation: ''manufacturer,'' ''new oil,'' ''recycled oil,'' and ''used oil.'' These are the principal terms defined in section 383(b) of EPCA.[18] The proposed rule, however, also adds definitions for ''re-refined oil'' and ''processed used oil,''

[10] *See* Legislative History Pub. L. 96–463, U.S. Code Cong. and Adm. News, pp. 4354–4356 (1980).

[11] Id.

[12] 46 FR 20979. There are 12 Commission orders requiring oil processors/manufacturers to cease advertising and selling their products without disclosing that such products are refined, reclaimed, or reprocessed. *Dabrol Products Corp.*, 70 F.T.C. 1099 (1949); *Pennsylvania Oil Terminal, Inc.*, 48 F.T.C. 356 (1951); *High Penn Oil Co., Inc.*, 53 F.T.C. 256 (1956); *Supreme Petroleum Products Inc.*, 54 F.T.C. 1129 (1956); *Royal Oil Corp.*, 70 F.T.C. 629 (1957); *Acme Refining Corp.*, 54 F.T.C. 1126 (1958); *Allied Petroleum Corp.*, 54 F.T.C. 1132 (1958); *Deep Rock Refining Co.*, 54 F.T.C. 1123 (1958); *Double Eagle Refining Co.*, 54 F.T.C. 1035 (1958); *Mohawk Refining Corp.*, 54 F.T.C. 1071 (1958); *Seaboard Oil Co.*, 54 F.T.C. 1135 (1958); *Salyer Refining Co.*, 54 F.T.C. 1026 (1958).

[13] NIST recently has been involved with the subject of re-refined oil pursuant to a 1993 Executive Order, which, in part, requires federal agencies to implement procurement guidelines for re-refined lubricating oil, and requires NIST to establish a program for testing the performance of products containing recovered materials. *See* Exec. Order No. 12,873, 58 FR 54911 (1993).

[14] Hydrotreating is a re-refining process in which oil is first distilled and then reacted with hydrogen to eliminate contaminants (such as chlorine and polynuclear aromatics) that an ordinary distillation process would not eliminate.

[15] 42 U.S.C. 6363(d)(1)(A).

[16] 42 U.S.C. 6363(d)(1)(B).

[17] 42 U.S.C. 6363(e)(2).

[18] 42 U.S.C. 6363(b).

and includes a revised, shorter definition for ''recycled oil.'' The Commission seeks comment on whether additional terms should be included and defined in section 311.1 of the final rule.

Section 311.2

Section 311.2 of the proposed rule is a general provision that states if any part of the Commission's rule is stayed or held invalid, the rest of the rule will remain in force.

Section 311.3

Section 311.3 of the proposed rule is a preemption provision that tracks the preemption language contained in section 383(e)(1) of EPCA.[19] Section 383(e)(1) states that ''no rule or order of the Commission, other than the rule required to be prescribed pursuant to section 383(d) of EPCA, and no law, regulation, or order of any State or political subdivision thereof may remain applicable to any container of recycled oil, if the law, regulation, rule, or order requires that containers of recycled oiled, which bear a label in accordance with the terms of the Commission's rule prescribed under section 383(d) of EPCA, bear any label with respect to the comparative characteristics of recycled oil with new oil that is not identical to that permitted by the Commission's rule respecting labeling standards prescribed under section 383(d) of EPCA.'' [20] The statute's preemptive effect is limited to recycled oil that meets the definition of recycled oil in EPCA (i.e., oil that is substantially equivalent to new oil pursuant to FTC-specified test procedures).

Section 383(e)(1) appears to intend that there be one uniform labeling requirement regarding the comparative characteristics of recycled oil (for a particular end use). If a container of recycled oil is labeled in accordance with the FTC's EPCA rule, neither the FTC nor any state or political subdivision can require any additional or different disclosure. By preventing multiple labeling requirements, this section furthers the Congressional purpose ''to promote the use of recycled oil.''

The proposed rule permits manufacturers to choose how they convey substantial equivalency (if they meet the specified test procedures for substantial equivalency). State laws that require specific disclosures (e.g., that the product is recycled) or have specific format requirements (e.g., specific print size requirements for their disclosures) would be preempted because they would require a label that is not ''identical to that permitted by the (FTC's) rule. . . .'' States, however, may adopt labeling requirements identical to those required by the FTC, if they wish, and prosecute violations under state law.

Section 383(e)(2) of EPCA also restricts Commission rules and orders, stating ''the Commission may [not] require any container of recycled oil to also bear a label containing any term, phrase, or description which connotes less than substantial equivalency. . . .'' To some extent this section overlaps with section 383(e)(1) of EPCA. But, whereas section (e)(1) expresses Congressional intent that there be a national uniform labeling standard, preempting non-identical state laws, section (e)(2) is specifically aimed at prohibiting Commission label requirements in addition to what the Commission prescribes under section 383(d)(1) of EPCA if the additional requirements would create the impression that the recycled oil is not substantially equivalent to recycled oil.

For example, the Commission's Used Oil Rule requires disclosures in advertising and on labeling that recycled oil is used.[21] When the Commission issues its final rule based on the equivalency determination for engine oil, the Used Oil Rule's requirements for origin labeling with respect to engine oil will be preempted pursuant to section 383(e) of EPCA.[22] Accordingly, the Commission need not take further action to repeal those portions of the Used Oil Rule. Further, the relevant labeling origin provisions of the Used Oil Rule and the twelve Commission orders concerning recycled oil [23] continue to be subject to Congressional stay of enforcement as to non-engine oils.[24] (The Used Oil covers other lubricating oils as to which the EPCA preemption does not apply.) The Commission also is continuing its 1981 stay of the origin advertising provisions of the Used Oil Rule as to all oils.[25]

Section 311.4

In accordance with section 383(d)(1)(A)(i) of EPCA,[26] section 311.4 of the proposed rule prescribes test procedures for determining the substantial equivalency of processed used oil with new oil distributed for use as engine oil. The test procedures, as reported to the Commission by NIST, are found in American Petroleum Institute Publication 1509, Thirteenth Edition, January 1995, entitled ''Engine Oil Licensing and Certification System.'' [27] In its letter transmitting the test procedures to the Commission, NIST stated that the engine test procedures described in API Publication 1509 combined with the API Engine Oil Licensing and Certification System are accepted for use with automotive engine oils by the Society of Automotive Engineers, the American Society of Testing and Materials, and all major automotive engine manufacturers.

The American Petroleum Institute operates a voluntary licensing and certification system that is designed to provide consumers with the technical information needed to understand the performance, viscosity, and accepted use of engine oils. Under this system, API licenses two types of ''Marks'' which may appear on the labeling of qualified engine oils: The API Service Symbol and the API Certification Mark. The Service Symbol identifies the type of engine in which the oil should be used, explains the oil's characteristics, and describes the oil's ability to protect against wear, sludge, and corrosion. The symbol also contains a rating of the oil's viscosity that is based on specifications established by the Society of Automotive Engineers. Finally, the symbol indicates whether the oil has any energy conserving properties when compared to a standard reference oil.

The API Certification Mark identifies engine oils recommended for a specified use. An engine oil is eligible to receive

[19] 42 U.S.C. 6363(e)(1).

[20] Id.

[21] Specifically, the Used Oil Rule, in part, requires manufacturers to disclose ''clearly and conspicuously that such used lubricating oil has been previously used, in all advertising, promotional material and on each front or face panel of the container.'' 16 CFR 406.5(b)(2).

[22] For example, the legislative history of the Used Oil Recycling Act reveals Congress' concern that the requirement in the FTC's rule was having an adverse impact on consumer acceptance of recycled oil. The re-refining industry expressed dissatisfaction with the Commission's proposal to substitute the term ''recycled'' for the term ''used'' in the Used Oil Rule, since it too might suggest that the product is in some way inferior. Similarly, EPCA's history indicates that Congress believed that disclosures conveying the origin of oil (words like used, recycled, re-refined) did not provide information that would be useful or relevant to consumers. Congress made clear that disclosures should instead pertain to performance characteristics and fitness for intended use.

[23] These orders will be eliminated if the Commission adopts as final its proposed rule for sunsetting administrative consumer protection orders over twenty years old. Duration of Existing Competition and Consumer Protection Orders, 60 FR 42,481 (1995).

[24] 42 U.S.C. 6363 note.

[25] 46 FR 20,979.

[26] 42 U.S.C. 6363(d)(1)(A)(i).

[27] The Commission will be seeking approval from the Director of the Federal Register to incorporate this document by reference into section 311.4 of the final rule, as required by section 552(a) of the APA, 5 U.S.C. 552(a), and by regulations issued by the Office of the Federal Register, 1 CFR 51.

the API Certification Mark only if it satisfies the minimum performance standards established by the International Lubricant Standardization and Approval Committee (''ILSAC''). To receive ILSAC approval and, in turn, API certification, motor oils must pass a series of tests designed to evaluate the following factors: (1) The oil's performance and its effect on the engine at zero degrees Fahrenheit or lower; (2) the extent to which the oil prevents engine rust and corrosion; (3) the oil's fuel efficiency; (4) the capability of the oil to reduce friction and to protect moving parts within the engine from fusing together; (5) the oil's resistance to thickening under high temperatures up to three hundred degrees Fahrenheit; (6) the level of detergents and dispersants in the oil; and (7) the content of phosphorus in the oil. The current standards for these factors, as well as the applicable test procedures, are found in Appendices D, E, F, G, I, J, K, L, M, and N of API Publication 1509.

Section 311.5

In accordance with section 383(d)(1)(A)(ii) of EPCA,[28] section 311.5 of the proposed rule prescribes labeling standards applicable to containers of recycled oil. Section 311.5 states that a manufacturer may represent, on a label on a container of processed used oil, that such oil is substantially equivalent to new oil for engine use, but only if the manufacturer has determined the substantial equivalency of the oil to new oil for that particular end use in accordance with the test procedures prescribed by the Commission, and has based the representation on that determination. For example, a manufacturer could represent that its oil is substantially equivalent to new oil by displaying the API Mark on its container. A manufacturer would not be required to add any qualifiers to its label such as ''used'' or ''re-refined.''

The Commission's proposal focuses on the performance of oil and its fitness for an intended use rather than its origin, and thus should encourage the recycling of used oil, encourage the use of recycled oil, and reduce consumption of new oil by promoting increased utilization of recycled oil. Because the proposed rule does not mandate the use of specific disclosures, recycled oil manufacturers have flexibility to promote the performance of their products and their ''substantial equivalency'' with new oil and develop marketing strategies for various markets. For example, the proposed rule does not restrain manufacturers from voluntarily labeling recycled oil containers with terms or phrases such as ''recycled'' to assist in the marketing of their products.[29]

Section 311.6

Section 311.6 of the proposed rule tracks the language relating to prohibited acts and enforcement of the Commission's rule contained in sections 524 and 525 of EPCA.[30] Pursuant to section 524 of EPCA, it is a prohibited act to violate the Commission's final rule issued pursuant to section 383 of EPCA.[31] The proposed rule declares that it is unlawful for any manufacturer to represent, on a label on a container of processed used oil, that the processed used oil is substantially equivalent to new oil for engine use unless the manufacturer has based such representation on the manufacturer's determination of the substantial equivalency of the processed used oil to new oil for use as engine oil in accordance with the test procedures prescribed under section 311.4 of the proposed rule.

The proposed rule also provides that violations will be subject to enforcement in accordance with section 525 of EPCA. Section 525 of EPCA provides that whoever violates the Commission's final rule is subject to a civil penalty of not more than $5,000 for each violation.[32] Whoever willfully violates the Commission's rule shall be fined not more than $10,000 for each violation.[33] Any person who knowingly and willfully violates the Commission's rule after having been subjected to a civil penalty for a prior violation of the rule, shall be fined not more than $50,000, or imprisoned not more than six months, or both.[34] Further, pursuant to section 525 of EPCA, whenever it appears to any officer or agency of the United States (in whom is vested,or to whom is delegated, authority under EPCA) that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of the Commission's rule, such officer or agency may request the Attorney General to bring an action in an appropriate district court of the United States to enjoin such acts or practices, and upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court also may issue mandatory injunctions commanding any person to comply with the Commission's rule.[35]

Because section 525 of EPCA does not explicitly authorize the Commission to bring enforcement actions, this rule will be enforced by the Department of Justice under 28 U.S.C. 516, a provision that authorizes the Department of Justice to enforce statutes that are not specifically assigned to other agencies for enforcement. The Commission, however, has the authority to investigate violations, and make referrals to the Department of Justice pursuant to section 525(d) of EPCA.[36]

IV. Effective Date

EPCA directs the Commission to ''prescribe'' the relevant test procedures and pertinent labeling standards within 90 days after the date on which NIST reports such test procedures to the Commission. It does not, however, specify an effective date for the rule. The Commission proposes that the rule become effective 30 days after publication of a final rule in the **Federal Register**. The Commission seeks comment on whether the proposed effective date will allow affected interests sufficient time to comply with the proposed labeling standards.

V. Invitation To Comment

The Commission invites interested persons to address any questions of fact, law, or policy that they believe may bear upon the proposed rule. The Commission particularly desires comment, however, on the questions listed below. All comments should reference the aspect of the proposed rule or question being discussed. Comments opposing the proposed rule or specific provisions should, if possible, suggest a specific alternative. Proposals for alternative regulations should include reasons and data explaining why the alternative would better serve the purposes of section 383 of EPCA.

Before adopting a final rule, consideration will be given to any written comments timely submitted to the Commission. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act[37] and the Commission's Rule of Practice,[38] during normal business days from 8:30 a.m. to 5 p.m., at the Public Reference Room, Room 130, Federal Trade Commission,

[28] 42 U.S.C. 6363(d)(1)(A)(ii).

[29] Manufacturers should, of course, consider the Commission's Guides For The Use Of Environmental Marketing Claims. *See e.g.,* 16 CFR 260.7(e).

[30] 42 U.S.C. 6394(2) and 42 U.S.C. 6395.

[31] 42 U.S.C. 6394(2).

[32] 42 U.S.C. 6395(a).

[33] 42 U.S.C. 6395(b).

[34] 42 U.S.C. 6395(c).

[35] 42 U.S.C. 6395(d).

[36] 42 U.S.C. 6395(d).

[37] 5 U.S.C. 552.

[38] 16 CFR 4.11.

6th and Pennsylvania Ave., NW., Washington, DC 20580.

A. Proposed Labeling Rule

The Commission is proposing labeling standards applicable to containers of recycled engine oil. The proposed rule also prescribes test procedures, as reported to the Commission by NIST, for determining the substantial equivalency of processed used engine oil to new oil, and includes definition, preemption and prohibited acts sections that track the language contained in sections 383, 524, and 525 of EPCA. The Commission seeks comment on all aspects of its proposal. The questions below also include those that are routinely asked in conducting FTC regulatory reviews.[39]

(1) Is the Commission's proposal consistent with, and does it promote, the purposes of section 383 of EPCA? If yes, why; if no, why not?

(2) Should the Commission issue its proposal relating to the labeling of recycled engine oil containers as a final rule? If yes, why; if no, why not?

(3) What are the advantages of the Commission's proposal?

(4) What changes, if any, should be made to the proposed rule to increase the benefits of the rule?

(a) How would these changes affect the costs the proposed rule would impose on firms subject to its requirements?

(5) What significant burdens or costs, including costs of compliance, will the proposed rule impose on firms subject to its requirements?

(a) Will the proposed rule provide benefits to such firms?

(b) To what extent will consumers of recycled engine oils benefit or be harmed by the Commission's proposal?

(c) How will the Commission's proposal affect the consumption of recycled engine oil relative to new engine oil?

(6) What changes, if any, should be made to the proposed rule to reduce the burdens or costs that would be imposed on firms subject to its requirements?

(a) How would these changes affect the benefits provided by the proposed rule?

(7) Should the Commission require or permit any additional or alternative disclosures, or variations on the proposed labeling standards? If yes, how should the Commission's proposal be modified, and why; if no, why not?

(8) To what extent would any recycled oil container labeling requirements specified by law (either federal, state, or local) be affected by the Commission's proposal?

(9) Are there additional appropriate and meaningful definitions that the Commission should include in section 311.1 of the final rule? If yes, what should they be, and why; if no, why not?

B. Effective Date

The Commission proposes that its rule become effective 30 days after publication of a final rule in the **Federal Register**.

(1) Does the proposed effective date allow affected interests sufficient time to comply with the proposed rule? If yes, why; if no, why not? How much extra time would be necessary to comply with the proposed rule? Why is that extra time necessary?

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'')[40] requires agencies to prepare regulatory flexibility analyses when publishing proposed rules[41] unless the proposed rule, if promulgated, would not have a ''significant economic impact on a substantial number of small entities.''[42] Here, the economic impact of the proposed labeling standards appears to be *de minimis.* The Commission's proposed rule permits, rather than requires, any container of recycled oil to bear a label indicating that it is substantially equivalent to new engine oil, if such determination has been made in accordance with the test procedures prescribed in the proposed rule. Any economic costs incurred by entities that choose to make a determination of substantial equivalency are neither statutorily imposed nor imposed by the proposed regulations. The Commission proposes no reporting or recordkeeping requirements, and the proposed rule permits recycled oil containers to be labeled with information that is basic and easily ascertainable.

The Commission also tentatively concludes that the proposed rule also will not affect a substantial number of small entities because information the Commission currently possesses indicates that relatively few companies currently manufacture and sell recycled oil as engine oil. Of those that do, most are not ''small entit[ies]'' as that term is defined either in section 601 of RFA[43] or applicable regulations of the Small Business Administration.[44]

In light of the above, the Commission certifies, pursuant to section 605 of RFA, 5 U.S.C. 605, that the proposed rule would not, if promulgated, have a significant impact on a substantial number of small entities and, therefore, that a regulatory analysis is not necessary. The Commission requests comment on this certification, and whether the proposed rule will have a significant impact on a substantial number of small entities. After reviewing any comments received on this subject, the Commission will decide whether the preparation of a final regulatory-flexibility analysis is appropriate.

D. Paperwork Reduction Act

If promulgated, the Commission's proposed rule would not involve the ''collection of information'' as defined by the regulations of the Office of Management and Budget (''OMB'')[45] implementing the Paperwork Reduction Act (''PRA'').[46] The Commission's proposed rule contains no reporting, recordkeeping, labeling or other third-party disclosure *requirements*, so there is no ''information collection'' in this proceeding to submit to OMB for clearance. However, to ensure the accuracy of its conclusion, the Commission solicits comment on any paperwork burden that the public believes the proposed requirements may impose.

VI. Additional Information for Interested Persons

A. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

B. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Commission Rule of Practice 1.18(c),[47] communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor during the course of this rulemaking shall be subject to the following treatment: Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the

[39] The Commission has implemented a program to review all of its current and proposed rules and guides. One purpose of the review is to minimize the economic impact of new regulatory actions by seeking comment on, for example, regulatory options.

[40] 5 U.S.C. 601–612.

[41] 5 U.S.C. 603(a).

[42] 5 U.S.C. 605(b).

[43] 5 U.S.C. 601(6).

[44] 13 CFR 121.

[45] 5 CFR 1320.7(c).

[46] 44 U.S.C. 3501–3520.

[47] 16 CFR 1.18(c).

discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. Oral communications from members of Congress shall be transcribed or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and promptly placed on the public record, together with any written communication and summaries of any oral communications relating to such oral communications.

List of Subjects in 16 CFR Part 311

Energy conservation, Incorporation by reference, Labeling, Recycled oil, Trade practices.

Text of Proposed Rule

Accordingly, it is proposed that Chapter I of 16 CFR be amended by adding a new part 311 to Subchapter C to read as follows:

PART 311—LABELING STANDARDS FOR RECYCLED OIL CONTAINERS

Sec.
311.1 Definitions.
311.2 Stayed or invalid parts.
311.3 Preemption.
311.4 Testing.
311.5 Labeling.
311.6 Prohibited acts.

Authority: 42 U.S.C. 6363(d)

§ 311.1 Definitions.

As used in this Part:

(a) *Manufacturer* means any person who re-refines or otherwise processes used oil to remove physical or chemical impurities acquired through use or who blends such re-refined or otherwise processed used oil with new oil or additives.

(b) *New oil* means any oil which has been refined from crude oil and has not been used, and which may or may not contain additives. Such term does not include used oil or recycled oil.

(c) *Processed used oil* means re-refined or otherwise processed used oil or blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives.

(d) *Recycled oil* means processed used oil with respect to which the manufacturer has determined, pursuant to § 311.4 of this part, is substantially equivalent to new oil for use as engine oil.

(e) *Used oil* means any oil which has been refined from crude oil, has been used, and as a result of such use has been contaminated by physical or chemical impurities.

(f) *Re-refined oil* means used oil from which physical and chemical contaminants acquired through use have been removed.

§ 311.2 Stayed or invalid parts.

If any part of this rule is stayed or held invalid, the rest of it will remain in force.

§ 311.3 Preemption.

No law, regulation, or order of any State or political subdivision thereof may apply, or remain applicable, to any container of recycled oil, if such law, regulation, or order requires any container of recycled oil, which container bears a label in accordance with the terms of § 311.5 of this Part, to bear any label with respect to the comparative characteristics of such recycled oil with new oil that is not identical to that permitted by § 311.5 of this Part.

§ 311.4 Testing.

To determine the substantial equivalency of processed used oil with new oil for use as engine oil, manufacturers must use the test procedures that were reported to the Commission by the National Institute of Standards and Technology (''NIST'') on July 27, 1995, entitled ''Engine Oil Licensing and Certification System,'' and found in Publication 1509 of the American Petroleum Institute (''API''), Thirteenth Edition, January, 1995.

§ 311.5 Labeling.

A manufacturer may represent, on a label on a container of processed used oil, that such oil is substantially equivalent to new oil for use as engine oil only if the manufacturer has determined that the oil is substantially equivalent to new oil for use as engine oil in accordance with the NIST test procedures prescribed under § 311.4 of this Part, and has based the representation on that determination.

§ 311.6 Prohibited acts.

It is unlawful for any manufacturer to represent, on a label on a container of processed used oil, that such oil is substantially equivalent to new oil for use as engine oil unless the manufacturer has based such representation on the manufacturer's determination that the processed used oil is substantially equivalent to new oil for use as engine oil in accordance with the NIST test procedures prescribed under § 311.4 of this Part. Violations will be subject to enforcement through civil penalties, imprisonment, and/or injunctive relief in accordance with the enforcement provisions of Section 6395 of the Energy Policy and Conservation Act (42 U.S.C. 6395).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–21447 Filed 8–25–95; 8:45 am]

BILLING CODE 6750–01–M

federal register

Monday
August 28, 1995

Part XI

The President

Presidential Determination No. 95–34 of August 3, 1995

Presidential Determination No. 95–35 of August 10, 1995

Presidential Determination No. 95–36 of August 14, 1995

Federal Register
Vol. 60, No. 166
Monday, August 28, 1995

Presidential Documents

Title 3—

The President

Presidential Determination No. 95–34 of August 3, 1995

Determination To Authorize the Furnishing of Emergency Military Assistance to the United Nations for Purposes of Supporting the Rapid Reaction Force in Bosnia Under Section 506(a)(1) of the Foreign Assistance Act

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

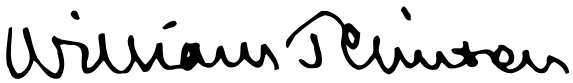
Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(1) (the ''Act''), I hereby determine that:

(1) an unforeseen emergency exists, which requires immediate military assistance to an international organization; and

(2) the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except section 506 of the Act.

Therefore, I hereby authorize the furnishing of up to $17,000,000 in defense articles and defense services from the Department of Defense to the United Nations for purposes of supporting the Rapid Reaction Force in Bosnia.

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



THE WHITE HOUSE,
Washington, August 3, 1995.

[FR Doc. 95–21440
Filed 8–24–95; 4:24 pm]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 95–35 of August 10, 1995

Presidential Determination Under Section 1542(f) of the Food, Agriculture, Conservation and Trade Act of 1990, as Amended—Emerging Democracies

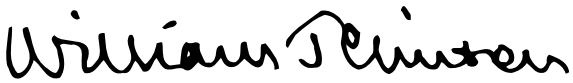
Memorandum for the Secretary of State [and] the Secretary of Agriculture

Pursuant to the authority vested in me by section 1542(f) of the Food, Agriculture, Conservation and Trade Act of 1990, as amended (7 U.S.C. 5622 note) (hereinafter ''the Act''), I hereby determine that the following countries are taking the steps set forth in section 1542(f) of the Act to qualify as emerging democracies for purposes of that section:

Albania, Bangladesh, Belarus, Bosnia and Herzegovina, Bulgaria, Cambodia, Croatia, Czech Republic, Egypt, El Salvador, Estonia, the Former Yugoslav Republic of Macedonia, Ghana, Guatemala, Hungary, Jordan, Kazakhstan, Latvia, Lithuania, Morocco, Namibia, Nicaragua, Pakistan, Panama, the Philippines, Poland, Romania, Russia, Slovak Republic, Slovenia, South Africa, Tanzania, Tunisia, Ukraine, Yemen, and Zimbabwe.

In making this determination, I have considered the eligibility only of those countries for which programs are underway or currently contemplated by the Department of Agriculture.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, August 10, 1995.

[FR Doc. 95–21441
Filed 8–24–95; 4:25 pm]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 95–36 of August 14, 1995

Suspending Restrictions on U.S. Relations With the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Middle East Peace Facilitation Act of 1994, part E of title V, Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Public Law 103–236, as amended (''the Act''), I hereby:

(1) certify that it is in the national interest to suspend the application of the following provisions under law until October 1, 1995:

(A) Section 307 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2227), as it applies with respect to the Palestine Liberation Organization or entities associated with it;

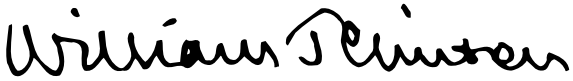
(B) Section 114 of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (22 U.S.C. 287e note), as it applies with respect to the Palestine Liberation Organization or entities associated with it;

(C) Section 1003 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2502); and

(D) Section 37, Bretton Woods Agreement Act (22 U.S.C. 286w), as it applies to the granting to the Palestine Liberation Organization of observer status or other official status at any meeting sponsored by or associated with the International Monetary Fund.

(2) certify that the Palestine Liberation Organization continues to abide by the commitments described in section 583(b)(4) of the Act.

You are authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register.**



THE WHITE HOUSE,
Washington, August 14, 1995.

[FR Doc. 95–21442
Filed 8–24–95; 4:26 pm]
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Federal Register

Vol. 60, No. 166

Monday, August 28, 1995

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The United States Government Manual

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FEDERAL REGISTER PAGES AND DATES, AUGUST

39101–39240 1
39241–39624 2
39625–39834 3
39835–40052 4
40053–40258 7
40259–40452 8
40453–40736 9
40737–40992 10
40993–41792 11
41793–42024 14
42025–42424 15
42425–42766 16
42767–43000 17
43001–43346 18
43347–43512 21
43513–43704 22
43705–43952 23
43953–44252 24
44253–44414 25
44415–44726 28

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6814 40451
6815 40736
6816 43345
6817 43703

Executive Orders:
July 9, 1910 (Revoked in part by PLO 7153) 42067
12924 (See Notice of August 15).....42767
12967 39623
12968 40245
12969 40989

Administrative Orders:
Memorandums:
August 8, 1995 41791
August 10, 1995 42023
Notices:
August 15, 1995 42767
Presidential Determinations:
No. 95–32 of July 28, 1995 40255
No. 95–33 of July 31, 1995 40257
No. 95–34 of August 3, 1995 44721
No. 95–35 of August 10, 1995 44723
No. 95–36 of August 14, 1995 44725

4 CFR

21 40737

5 CFR

316 39101
351 44253
430 43936
432 43936
451 43936
531 43936
532 40744
581 42425
1201 .....40744, 43001, 44254
2640 44706

Proposed Rules:
315 43724
2421 39878
2422 39878

7 CFR

51 39241
272 .....43347, 43513
273 .....43347, 43513
301 .....39101, 39835, 40053, 40993, 44415
319 39101
400 .....40054, 40055
401 40055
402 40055
404 40055
718 44255
792 43705
800 39242
802 42429
905 40056
915 42769
916 43350
917 43350
922 39104
923 39104
924 39104
927 42771
928 43351
929 40745
931 40058
932 42772
944 42772
948 .....39105, 40259
959 .....40747, 42774
981 .....40059, 42776
982 40061
984 40063
989 39837
993 39107
997 43353
1004 43953
1126 40260
1413 .....43001, 44255
1414 44255
1415 44255
1416 44255
1421 43001
3015 44122
3019 44122

Proposed Rules:
17 43566
58 40115
273 40311
319 .....39888, 39889, 42814
340 43567
352 42814
353 42472
354 42472
920 44282
987 40116
1005 43986
1007 42815
1011 43986
1030 41833
1040 43066
1046 .....43986, 43994
1065 41833
1068 41833
1076 41833
1079 41833
1280 40313
1924 44283
1942 44283
1948 44283
1980 44283
3403 42990

8 CFR

103....40064
208....44260
212....40064, 44260
214....44260
217....40064
235....40064
236....44260
242....43954, 44260
245....44260
248....44260
264....40064
274a....44260
286....40064
299....43954, 44260

9 CFR

77....44416
78....44416
117....43355
160....39840
161....39840
201....42777
203....42777
381....43356, 44396

Proposed Rules:

94....39890, 43409
113....43573
201....43411
308....41029, 42816
310....41029, 42816
318....41029, 42816
320....41029, 42816
325....41029, 42816
326....41029, 42816
327....41029, 42816
381....41029, 42816

10 CFR

55....43358
810....43002

Proposed Rules:

20....40117
30....40117
40....40117
50....40117, 43726
51....40117
52....43726
60....42079
70....40117
72....40117, 42079
73....42079
75....42079
100....43726
436....44286
490....40539
600....40323

11 CFR

106....42429
9002....42429
9003....42429
9004....42429
9006....42429
9007....42429
9008....42429
9032....42429
9033....42429
9034....42429
9036....42429
9037....42429
9038....42429
9039....42429

12 CFR

3....39226, 39490, 43191
6....39226
208....39226, 39490
219....44144
225....39226
325....39226, 39490
327....42680, 42741
565....39226
567....39226, 42025
611....42029
618....42029
620....42029
934....42779

Proposed Rules:

3....39495
208....39495
220....43726
325....39495
327....40776
500....44442
504....44442
510....44442
515....44442
529....44442
533....44442
543....44442
545....44442
552....44442
556....44442
562....44442
563....44442
563d....44442
563g....44442
567....44442
571....44442
583....44442
584....44442
701....39273
741....39274

13 CFR

120....42779
122....42779, 42781

Proposed Rules:

116....42817

14 CFR

25....39625, 42029
39....39243, 39245, 39627, 39628, 39631, 39633, 39635, 39637, 39842, 40748, 40750, 40753, 40755, 40993, 41793, 41795, 43359, 43361, 43362, 43364, 43517, 43519, 43707, 43963, 44417, 44419, 44421, 44423
71....39247, 39638, 39639, 40069, 41798, 41799, 42031, 42429, 42430, 42431, 43366
73....40994, 43708
95....43964
97....40070, 40071, 42781, 42784, 43965
189....39614
200....43521
201....43521
203....43521
204....43521
206....43521
215....43521
232....43521
271....43521
272....43521
291....43521
294....43521
296....43521
297....43521
298....43521
300....43521
313....43521
324....43521
325....43521
372....43521
379....43521
398....43521
399....43521

Proposed Rules:

Ch. I....43726, 44142
1....41160
25....44387
33....43727
39....40118, 40782, 40783, 41030, 41868, 42479, 43089, 43413, 43415, 43417, 43728, 43730, 43995, 44450
61....41160, 42764
63....42764
65....42764
71....39280, 39893, 39894, 40020, 40227, 43420
108....42764
121....41992, 42764
125....41992
127....41992
135....41992, 42764
141....41160
143....41160
145....41992

15 CFR

902....39248
905....39249

Proposed Rules:

801....40336
806....39128
944....40540
990....39804, 43574

16 CFR

3....39640
14....42031
234....40262
237....40263
242....40265
248....40267
252....40453
305....43367
310....43842
800....40704
803....40704
1117....41799
1500....40785, 41801

Proposed Rules:

3....42481
311....44712

17 CFR

30....41802
200....39643
240....40994

Proposed Rules:

270....39574, 39592
274....39574

18 CFR

35....39251
284....39252

Proposed Rules:

35....43997
141....43998
284....39895
388....43998

19 CFR

19....42431
101....41804
122....41804
132....39108
191....40995

20 CFR

335....40073
404....42431, 43709
422....42431

Proposed Rules:

230....42482, 43999
345....43300
366....42818
367....42818
416....40542

21 CFR

73....41805
175....39645
176....39645
177....39647, 40073
178....39648, 43370
310....42435
510....39846, 40454, 40455
520....39846, 40454
522....39846
529....40455
524....39846
558....39846, 39847
882....43967
1309....42436
1310....42436

Proposed Rules:

201....44182
208....44182
314....44182
601....44182
1301....43732
1303....43732
1304....43732
1305....43732
310....43091, 43421
341....43091, 43421
801....41314
803....41314
804....41314
897....41314
898....44451

22 CFR

41....42034
213....40456

23 CFR

635....44271

24 CFR

25....39236
26....39236
100....43322
202....39236
203....42754
206....42754
300....42012
310....42012
320....42012
330....42012
340....42012
350....42012
360....42012
370....42012
380....42012
390....42012

395....42012
586....42972
888....42222, 42230
1710....42436
Proposed Rules:
982....43840
888....42290

26 CFR

1....39649, 40075, 40997, 42785, 43531, 44274
20....43531, 43554
25....43531
31....39109
40....40079
48....40079
301....39652, 40086
602....40079, 40997, 43531, 43554
Proposed Rules:
20....43574
1....39896, 39902, 40792, 40794, 40796, 42819, 43091
301....39903, 43091

28 CFR

2....40092, 40094, 40270
49....44279

29 CFR

20....41016
1613....43371
1614....43371
1910....40457
1926....39254
1952....43969
2200....41805
2606....39848
2609....39848
2619....42037
2676....42037
Proposed Rules:
1910....39281
2510....39208
2606....44158
2615....41033
2616....44158
2617....44158
2629....44158

30 CFR

901....42040
925....43972
946....40271
948....42437
Proposed Rules:
206....40120, 40127, 43735
250....41034, 42819
260....43735
256....41034
931....43576
944....43577

31 CFR

0....42042
103....44144
515....39255
Proposed Rules:
1....40797
103....39665, 44146, 44151

32 CFR

92....40277
356....44277
358....44277
372....44277
393....44277
Proposed Rules:
220....39285

33 CFR

100....40096, 43976, 43978, 44424, 44428
110....43372
117....40097, 43373
126....39788
127....39788
137....39849
151....43374
155....43374
165....40458, 41017, 41018, 42787, 42788, 42790, 43372, 44428, 44429, 44430
334....43378
Proposed Rules:
1....39130
117....39287, 40138, 42826, 42827
165....40543
183....40545

34 CFR

76....41286
366....39216
667....41286
668....42408
Proposed Rules:
98....44696
345....40688
371....42490

36 CFR

7....39257
242....40569, 40461
1220....44634
1222....44634
1228....44634
1234....44634
1253....40416
Proposed Rules:
13....40798
242....42085, 44000
1415....39905

37 CFR

1....41018, 44120
2....41018, 44120
7....41018, 44120
401....41811
Proposed Rules:
1....41035, 42352
3....42352
5....42352

38 CFR

2....40756

39 CFR

111....39111, 43005

40 CFR

9....40474, 42791, 43244, 43880
51....40098, 40465
52....39115, 39258, 39851, 39855, 39857, 40101, 40285, 40286, 40291, 40292, 40465, 40758, 42042, 43008, 43012, 43015, 43017, 43020, 43379, 43383, 43386, 43388, 43394, 43396, 43710, 43713, 43714, 44277, 44431
60....43244
61....39263, 43396
63....43244
70....39862, 40101, 42045
75....40295
80....40006
81....39115, 39258, 39857, 40297, 43017, 43020
82....40420
86....39264, 40474, 43880
93....40098
122....40230
124....40230
131....44120
136....39586, 44670
180....40498, 40500, 40503, 42443, 42446, 42447, 42449, 42450, 42453, 42456, 42458, 43718
185....40503, 42453, 42456, 42458, 42460
186....42460
195....41813
258....40104
261....41817
271....41818, 42046, 43979
272....44278
712....39654
Proposed Rules:
Ch. I....39668, 44290
9....41870
51....39297, 43092
52....39298, 39907, 39910, 39911, 40139, 40338, 40799, 42130, 42491, 43092, 43099, 43100, 43104, 43421, 43423, 43424, 43737, 44452
60....41870
61....39299, 43424
70....39911, 40140
80....40009
81....39298, 39911, 40338, 43104, 44452
85....43092
144....44652
146....44652
148....43654
180....39299, 39302, 40545, 42494, 43738
185....39302
194....39131
258....40799
260....41870
262....41870
264....41870
265....41870
268....43654
270....41870
271....41870, 43654
300....41051, 43424
302....40042
355....40042
372....39132, 44000
433....40145
438....40145
464....40145

41 CFR

Ch. 114....39864

42 CFR

409....39122
411....41914
484....39122
Proposed Rules:
412....39304
413....39304
424....39304
485....39304
489....39304

43 CFR

Public Land Orders:
7149....39655
7150....39655
7151....42792
7152....42792
7153....42067
7154....44435

44 CFR

64....39123, 42462
65....39865, 39867
67....39868
206....43740
Proposed Rules:
10....39694
67....39912

45 CFR

11....40505
1160....42464
1355....40505

46 CFR

30....39267, 40227, 41157
67....40238
150....39267, 40227, 41157
160....39268
310....44438
387....42466, 43720
514....44436
583....44436
Proposed Rules:
5....39306
10....39306
12....39306, 40145
15....39306
16....40145, 43426
32....43427

47 CFR

1....39268, 39656, 40712
2....39657
15....40760
26....40712
63....44280
64....42068
68....42068
73....39127, 39659, 40105, 40301, 40761, 41027, 42069, 43026, 43027, 43028, 43781, 44439
87....40227
90....39660, 43720
Proposed Rules:
1....39134
21....43740
25....43740
36....44296
61....39136
64....39136
69....39136, 44296
73....39141, 39142, 39143, 39308, 40146, 40812, 40813, 40814, 41870, 42130, 44003, 44004
95....43105

48 CFR

Ch. I....42648

Ch. II 40105
1....42649, 42664
2....42652
4....42649, 42652
5....42652
6....42652, 42664
14....42649, 42652
15 ....42649, 42652, 43721
17....42652
19....42652
25....42649, 42652
31 ....42657, 42659, 42662
36....42652
37....42659
42 ....42657, 42659, 42663
50....42649
51....42652
52 ....42649, 42652, 42657, 42659, 42663
204....43191
206....40106
207....40106
215....40106, 43191
217....43191
219 ....40106, 41157, 43563
227....41157
235....40107
252....40106
501....40107, 42793
503....42793, 42801
504....42801
505....42793, 42801
506....42793
507....42793, 42801
510....42801
512....42801
513....42801
514....42801, 44387
515....42801
519....39660, 42793
523....42801
528....42801
529....42801
532....42801
536....42801
543....42801
546....42801
552....39660, 42793
570....42793
601....39661
602....39661
605....39661
606....39661
609....39661
610....39661
613....39661
616....39661
619....39661
625....39661
636....39661
637....39661
653....39661
939....39871
1516....43402
1552....43402
1801....40508
1803....40508
1804....40508
1805....40508
1808....40508
1809....40508
1810....40508
1812....40508
1814....40508
1815....40508
1819....40508
1822....40508
1825....40508
1827....40508
1829....40508
1831....40508
1833....40508
1835....40508
1837....40508
1839....40508
1846....40508
1849....40508
1850....40508
1852....40508
1853....40508
1870....40508
2801....40108
2802....40108
2804....40108
2805....40108
2807....40108
2808....40108
2809....40108
2810....40108
2812....40108
2813....40108
2814....40108
2815....40108
2816....40108
2817....40108
2828....40108
2829....40108
2830....40108
2832....40108
2833....40108
2835....40108
2845....40108
2852....40108
2870....40108
Proposed Rules:
31....43508
204....43756
209....40146
216....40146
223....43756
246....40146
252....40146, 43756
1516....42828
1552....42828

49 CFR

10....43982
171....39608, 40030
172 ....39608, 39991, 40030
173....40030
178....40030
192....41821, 43028
390....40761, 44439
501....43028
571 ....41028, 42804, 43031
572....43031
575....39269
589....43031
653....39618
654....39618
800....40111
830....40111
831....40111
1023....39874
Proposed Rules:
5....39919
107....43430
229....44457
571 ....39308, 42496, 42830
575....42496
1051....40548
1220....40548
1312....39143

50 CFR

2....40301
17....43721
18....42805
20....43314, 43318
23....43405
100....40459, 40461
204....39248
210....39271
216....39271
217....42809
222....43721
227....42809
250....39271
270....39271
285....42469
301 ....39663, 40227, 43563
380....43062
604....39271
625....40113
640....41828
661 ....39991, 40302, 42469, 43564, 43984
662....40303
663....39875
671....40763
672 ....40304, 40763, 43494
673....42070
675 ....39877, 40304, 40763, 43494, 43984
676....40304, 40763
677....40763, 42470
Proposed Rules:
Ch. VI 40340, 40815
17 ....39309, 39314, 39326, 39337, 40149, 40339, 40549, 42140
20....42960, 44463
23....39347
32....42668
100....42085, 44000
227....43106
402....39921
625....42830
638....40150
642....39698
646....40815
649....40341
650....40341
651....40341
663....39144
675....43579
683....43106
697....39700

CFR CHECKLIST

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3 (1994 Compilation and Parts 100 and 101)	(869–026–00002–6)	40.00	[1] Jan. 1, 1995
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1940–1949	(869–026–00023–9)	30.00	Jan. 1, 1995
1950–1999	(869–026–00024–7)	40.00	Jan. 1, 1995
2000–End	(869–026–00025–5)	14.00	Jan. 1, 1995
8	(869–026–00026–3)	23.00	Jan. 1, 1995
9 Parts:			
1–199	(869–026–00027–1)	30.00	Jan. 1, 1995
200–End	(869–026–00028–0)	23.00	Jan. 1, 1995
10 Parts:			
0–50	(869–026–00029–8)	30.00	Jan. 1, 1995
51–199	(869–026–00030–1)	23.00	Jan. 1, 1995
200–399	(869–026–00031–0)	15.00	[6] Jan. 1, 1993
400–499	(869–026–00032–8)	21.00	Jan. 1, 1995
500–End	(869–026–00033–6)	39.00	Jan. 1, 1995
11	(869–026–00034–4)	14.00	Jan. 1, 1995
12 Parts:			
1–199	(869–026–00035–2)	12.00	Jan. 1, 1995
200–219	(869–026–00036–1)	16.00	Jan. 1, 1995
220–299	(869–026–00037–9)	28.00	Jan. 1, 1995
300–499	(869–026–00038–7)	23.00	Jan. 1, 1995
500–599	(869–026–00039–5)	19.00	Jan. 1, 1995
600–End	(869–026–00040–9)	35.00	Jan. 1, 1995
13	(869–026–00041–7)	32.00	Jan. 1, 1995
14 Parts:			
1–59	(869–026–00042–5)	33.00	Jan. 1, 1995
60–139	(869–026–00043–3)	27.00	Jan. 1, 1995
140–199	(869–026–00044–1)	13.00	Jan. 1, 1995
200–1199	(869–026–00045–0)	23.00	Jan. 1, 1995
1200–End	(869–026–00046–8)	16.00	Jan. 1, 1995
15 Parts:			
0–299	(869–026–00047–6)	15.00	Jan. 1, 1995
300–799	(869–026–00048–4)	26.00	Jan. 1, 1995
800–End	(869–026–00049–2)	21.00	Jan. 1, 1995
16 Parts:			
0–149	(869–026–00050–6)	7.00	Jan. 1, 1995
150–999	(869–026–00051–4)	19.00	Jan. 1, 1995
1000–End	(869–026–00052–2)	25.00	Jan. 1, 1995
17 Parts:			
1–199	(869–026–00054–9)	20.00	Apr. 1, 1995
*200–239	(869–026–00055–7)	24.00	Apr. 1, 1995
240–End	(869–026–00056–5)	30.00	Apr. 1, 1995
18 Parts:			
1–149	(869–026–00057–3)	16.00	Apr. 1, 1995
150–279	(869–026–00058–1)	13.00	Apr. 1, 1995
280–399	(869–026–00059–0)	13.00	Apr. 1, 1995
400–End	(869–026–00060–3)	11.00	Apr. 1, 1995
19 Parts:			
1–140	(869–026–00061–1)	25.00	April 1, 1995
141–199	(869–026–00062–0)	21.00	[9] Apr. 1, 1995
200–End	(869–026–00063–8)	12.00	Apr. 1, 1995
20 Parts:			
1–399	(869–026–00064–6)	20.00	Apr. 1, 1995
400–499	(869–026–00065–4)	34.00	Apr. 1, 1995
500–End	(869–026–00066–2)	34.00	Apr. 1, 1995
21 Parts:			
1–99	(869–026–00067–1)	16.00	Apr. 1, 1995
100–169	(869–026–00068–9)	21.00	Apr. 1, 1995
170–199	(869–026–00068–7)	22.00	Apr. 1, 1995
200–299	(869–026–00070–1)	7.00	Apr. 1, 1995
300–499	(869–026–00071–9)	39.00	Apr. 1, 1995
500–599	(869–026–00072–7)	22.00	Apr. 1, 1995
600–799	(869–026–00073–5)	9.50	Apr. 1, 1995
800–1299	(869–026–00074–3)	23.00	Apr. 1, 1995
1300–End	(869–026–00075–1)	13.00	Apr. 1, 1995
22 Parts:			
1–299	(869–026–00076–0)	33.00	Apr. 1, 1995
300–End	(869–026–00077–8)	24.00	Apr. 1, 1995
23	(869–026–00078–6)	22.00	Apr. 1, 1995
24 Parts:			
0–199	(869–026–00079–4)	40.00	Apr. 1, 1995
*200–219	(869–026–00080–8)	19.00	Apr. 1, 1995
220–499	(869–026–00081–6)	23.00	Apr. 1, 1995
500–699	(869–026–00082–4)	20.00	Apr. 1, 1995
700–899	(869–026–00083–2)	24.00	Apr. 1, 1995
900–1699	(869–026–00084–1)	24.00	Apr. 1, 1995
1700–End	(869–026–00085–9)	17.00	Apr. 1, 1995
25	(869–026–00086–7)	32.00	Apr. 1, 1995
26 Parts:			
§§ 1.0-1–1.60	(869–026–00087–5)	21.00	Apr. 1, 1995
§§ 1.61–1.169	(869–026–00088–3)	34.00	Apr. 1, 1995
§§ 1.170–1.300	(869–026–00089–1)	24.00	Apr. 1, 1995
§§ 1.301–1.400	(869–026–00090–5)	17.00	Apr. 1, 1995
§§ 1.401–1.440	(869–026–00091–3)	30.00	Apr. 1, 1995
§§ 1.441-1.500	(869-026-00092-1)	22.00	Apr. 1, 1995
§§ 1.501–1.640	(869–026–00093–0)	21.00	Apr. 1, 1995
*§§ 1.641–1.850	(869–026–00094–8)	25.00	Apr. 1, 1995
§§ 1.851–1.907	(869–026–00095–6)	26.00	Apr. 1, 1995
§§ 1.908–1.1000	(869–026–00096–4)	27.00	Apr. 1, 1995
§§ 1.1001–1.1400	(869–026–00097–2)	25.00	Apr. 1, 1995
§§ 1.1401–End	(869–026–00098–1)	33.00	Apr. 1, 1995
2–29	(869–026–00099–9)	25.00	Apr. 1, 1995
30–39	(869–026–00100–6)	18.00	Apr. 1, 1995
40–49	(869–026–000101–4)	14.00	Apr. 1, 1995

Title	Stock Number	Price	Revision Date
50–299	(869–026–00102–2)	14.00	Apr. 1, 1995
300–499	(869–026–00103–1)	24.00	Apr. 1, 1995
500–599	(869–026–00104–9)	6.00	[4] Apr. 1, 1990
600–End	(869–026–00105–7)	8.00	Apr. 1, 1995
27 Parts:			
1–199	(869–026–00106–5)	37.00	Apr. 1, 1995
200–End	(869–026–00107–3)	13.00	[8] Apr. 1, 1994
28 Parts:			
*1-42	(869–026–00108–1)	27.00	July 1, 1995
43-end	(869-022-00106-0)	21.00	July 1, 1994
29 Parts:			
0–99	(869–022–00107–8)	21.00	July 1, 1994
100–499	(869–022–00108–6)	9.50	July 1, 1994
500–899	(869–022–00109–4)	35.00	July 1, 1994
900–1899	(869–022–00110–8)	17.00	July 1, 1994
1900–1910 (§§ 1901.1 to 1910.999)	(869–022–00111–6)	33.00	July 1, 1994
1910 (§§ 1910.1000 to end)	(869–022–00112–4)	21.00	July 1, 1994
1911–1925	(869–022–00113–2)	26.00	July 1, 1994
1926	(869–022–00114–1)	33.00	July 1, 1994
1927–End	(869–022–00115–9)	36.00	July 1, 1994
30 Parts:			
1–199	(869–022–00116–7)	27.00	July 1, 1994
200–699	(869–022–00117–5)	19.00	July 1, 1994
700–End	(869–022–00118–3)	27.00	July 1, 1994
31 Parts:			
0–199	(869–022–00119–1)	18.00	July 1, 1994
200–End	(869–022–00120–5)	30.00	July 1, 1994
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–022–00121–3)	31.00	July 1, 1994
191–399	(869–022–00122–1)	36.00	July 1, 1994
400–629	(869–022–00123–0)	26.00	July 1, 1994
630–699	(869–026–00127–8)	14.00	[5] July 1, 1991
700–799	(869–022–00125–6)	21.00	July 1, 1994
800–End	(869–022–00126–4)	22.00	July 1, 1994
33 Parts:			
1–124	(869–022–00127–2)	20.00	July 1, 1994
125–199	(869–022–00128–1)	26.00	July 1, 1994
200–End	(869–022–00129–9)	24.00	July 1, 1994
34 Parts:			
1–299	(869–022–00130–2)	28.00	July 1, 1994
300–399	(869–022–00131–1)	21.00	July 1, 1994
400–End	(869–022–00132–9)	40.00	July 1, 1994
35	(869–022–00133–7)	12.00	July 1, 1994
36 Parts:			
1–199	(869–022–00134–5)	15.00	July 1, 1994
200–End	(869–022–00135–3)	37.00	July 1, 1994
37	(869–022–00136–1)	20.00	July 1, 1994
38 Parts:			
0–17	(869–022–00137–0)	30.00	July 1, 1994
18–End	(869–022–00138–8)	29.00	July 1, 1994
39	(869–022–00139–6)	16.00	July 1, 1994
40 Parts:			
1–51	(869–022–00140–0)	39.00	July 1, 1994
52	(869–022–00141–8)	39.00	July 1, 1994
53–59	(869–022–00142–6)	11.00	July 1, 1994
60	(869-022-00143-4)	36.00	July 1, 1994
61–80	(869–022–00144–2)	41.00	July 1, 1994
81–85	(869–022–00145–1)	23.00	July 1, 1994
86–99	(869–022–00146–9)	41.00	July 1, 1994
100–149	(869–022–00147–7)	39.00	July 1, 1994
150–189	(869–022–00148–5)	24.00	July 1, 1994
190–259	(869–022–00149–3)	18.00	July 1, 1994
260–299	(869–022–00150–7)	36.00	July 1, 1994
300–399	(869–022–00151–5)	18.00	July 1, 1994
400–424	(869–022–00152–3)	27.00	July 1, 1994
425–699	(869–022–00153–1)	30.00	July 1, 1994
700–789	(869–022–00154–0)	28.00	July 1, 1994
790–End	(869–022–00155–8)	27.00	July 1, 1994
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–022–00156–6)	9.50	July 1, 1994
101	(869–022–00157–4)	29.00	July 1, 1994
102–200	(869–022–00158–2)	15.00	July 1, 1994
201–End	(869–022–00159–1)	13.00	July 1, 1994
42 Parts:			
1–399	(869–022–00160–4)	24.00	Oct. 1, 1994
400–429	(869–022–00161–2)	26.00	Oct. 1, 1994
430–End	(869–022–00162–1)	36.00	Oct. 1, 1994
43 Parts:			
1–999	(869–022–00163–9)	23.00	Oct. 1, 1994
1000–3999	(869–022–00164–7)	31.00	Oct. 1, 1994
4000–End	(869–022–00165–5)	14.00	Oct. 1, 1994
44	(869–022–00166–3)	27.00	Oct. 1, 1994
45 Parts:			
1–199	(869–022–00167–1)	22.00	Oct. 1, 1994
200–499	(869–022–00168–0)	15.00	Oct. 1, 1994
500–1199	(869–022–00169–8)	32.00	Oct. 1, 1994
1200–End	(869–022–00170–1)	26.00	Oct. 1, 1994
46 Parts:			
1–40	(869–022–00171–0)	20.00	Oct. 1, 1994
41–69	(869–022–00172–8)	16.00	Oct. 1, 1994
70–89	(869–022–00173–6)	8.50	Oct. 1, 1994
90–139	(869–022–00174–4)	15.00	Oct. 1, 1994
140–155	(869–022–00175–2)	12.00	Oct. 1, 1994
156–165	(869–022–00176–1)	17.00	[7] Oct. 1, 1993
166–199	(869–022–00177–9)	17.00	Oct. 1, 1994
200–499	(869–022–00178–7)	21.00	Oct. 1, 1994
500–End	(869–022–00179–5)	15.00	Oct. 1, 1994
47 Parts:			
0–19	(869–022–00180–9)	25.00	Oct. 1, 1994
20–39	(869–022–00181–7)	20.00	Oct. 1, 1994
40–69	(869–022–00182–5)	14.00	Oct. 1, 1994
70–79	(869–022–00183–3)	24.00	Oct. 1, 1994
80–End	(869–022–00184–1)	26.00	Oct. 1, 1994
48 Chapters:			
1 (Parts 1–51)	(869–022–00185–0)	36.00	Oct. 1, 1994
1 (Parts 52–99)	(869–022–00186–8)	23.00	Oct. 1, 1994
2 (Parts 201–251)	(869–022–00187–6)	16.00	Oct. 1, 1994
2 (Parts 252–299)	(869–022–00188–4)	13.00	Oct. 1, 1994
3–6	(869–022–00189–2)	23.00	Oct. 1, 1994
7–14	(869–022–00190–6)	30.00	Oct. 1, 1994
15–28	(869–022–00191–4)	32.00	Oct. 1, 1994
29–End	(869–022–00192–2)	17.00	Oct. 1, 1994
49 Parts:			
1–99	(869–022–00193–1)	24.00	Oct. 1, 1994
100–177	(869–022–00194–9)	30.00	Oct. 1, 1994
178–199	(869–022–00195–7)	21.00	Oct. 1, 1994
200–399	(869–022–00196–5)	30.00	Oct. 1, 1994
400–999	(869–022–00197–3)	35.00	Oct. 1, 1994
1000–1199	(869–022–00198–1)	19.00	Oct. 1, 1994
1200–End	(869–022–00199–0)	15.00	Oct. 1, 1994
50 Parts:			
1–199	(869–022–00200–7)	25.00	Oct. 1, 1994
200–599	(869–022–00201–5)	22.00	Oct. 1, 1994
600–End	(869–022–00202–3)	27.00	Oct. 1, 1994

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–026–00053–1)	36.00	Jan. 1, 1995
Complete 1995 CFR set		883.00	1995
Microfiche CFR Edition:			
Complete set (one-time mailing)		188.00	1992
Complete set (one-time mailing)		223.00	1993
Complete set (one-time mailing)		244.00	1994
Subscription (mailed as issued)		264.00	1995
Individual copies		1.00	1995

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.

[9] Note: Title 19, CFR Parts 141-199, revised 4-1-95 volume is being republished to restore inadvertently omitted text.